

**ZB# 02-32**

**House of Apache  
(Monro Muffler)**

**70-1-2.1**

#02-32 - House of Apache

Area

70-1-2.1

Prelim.

May 15, 2002.

Public Hearing:

June 10, 2002.

Approved Area

Refund.

\$313.00

**APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)**

**APPLICANT:** House of Apache  
\_\_\_\_\_  
\_\_\_\_\_

**FILE#** 02-32

**RESIDENTIAL:** \$50.00  
**INTERPRETATION:** \$150.00

**COMMERCIAL:** \$150.00

**AREA** X

**USE** \_\_\_\_\_

**APPLICATION FOR VARIANCE FEE** ..... \$ 150.00

\* \* \*

**ESCROW DEPOSIT FOR CONSULTANT FEES** ..... \$ 500.00

**DISBURSEMENTS:**

**STENOGRAPHER CHARGES: \$4.50 PER PAGE**

**PRELIMINARY MEETING-PER PAGE** 5/13/02 ..... \$ 22.50  
**2ND PRELIMINARY- PER PAGE** 6/10/02-21 ..... \$ 94.50  
**3RD PRELIMINARY- PER PAGE** ..... \$ \_\_\_\_\_  
**PUBLIC HEARING - PER PAGE** ..... \$ \_\_\_\_\_  
**PUBLIC HEARING (CONT'D) PER PAGE** ..... \$ \_\_\_\_\_  
**TOTAL** ..... \$ 117.00

**ATTORNEY'S FEES: \$35.00 PER MEEETING**

**PRELIM. MEETING:** 5/13/02 ..... \$ 35.00  
**2ND PRELIM.** 6/10/02 ..... \$ 35.00  
**3RD PRELIM.** ..... \$ \_\_\_\_\_  
**PUBLIC HEARING** ..... \$ \_\_\_\_\_  
**PUBLIC HEARING (CONT'D)** ..... \$ \_\_\_\_\_  
**TOTAL** ..... \$ 70.00

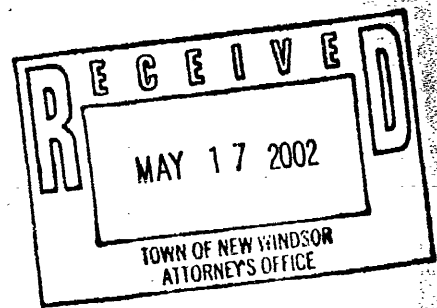
**MISC. CHARGES:**

..... \$ \_\_\_\_\_  
**TOTAL** ..... \$ 187.00

**LESS ESCROW DEPOSIT** ..... \$ 500.00  
**(ADDL. CHARGES DUE)** ..... \$ \_\_\_\_\_  
**REFUND DUE TO APPLICANT** .. \$ 313.00

paid dt. #  
38803  
5/16/02  
  
paid dt.  
38802

**Town of New Windsor  
555 Union Avenue  
New Windsor, NY 12553  
(845) 563-4611**



**RECEIPT  
#448-2002**

**05/17/2002**

**Jacobowitz & Gubits LLP  
158 Orange Avenue  
Walden, NY 12586**

**Received \$ 150.00 for Zoning Board Fees on 05/17/2002. Thank you for  
stopping by the Town Clerk's office.**

**As always, it is our pleasure to serve you.**

**Deborah Green  
Town Clerk**



In the Matter of the Application of  
**HOUSE OF APACHE, LTD. (MONRO MUFFLER)**

MEMORANDUM OF DECISION  
GRANTING AREA VARIANCE

#02-32.

**WHEREAS, HOUSE OF APACHE, LTD. (Monro Muffler Brake Inc.),** located at 104 South Central Avenue, Valley Stream, N. Y. 11580, has been referred by the Town Planning Board for 13,000 sq. ft. lot area variance for an easement for Martin's Food of South Burlington, Inc. (Hannaford Food & Drug) through the Monro Muffler (Apache) parcel located on Route 94 for purposes of construction of a supermarket on Route 32, Vails Gate, in a C zone; and

**WHEREAS,** a public hearing was held on the 10th day of June, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

**WHEREAS,** the Applicant appeared by Larry Wolinsky, Esq. of counsel to Jacobowitz and Gubits, LLP; and

**WHEREAS,** there were four spectators appearing at the public hearing; and

**WHEREAS,** one spectator spoke in opposition and the other spectator spoke neither in favor or in opposition to the Application, but expressed some concerns; and

**WHEREAS,** a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

**WHEREAS,** the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a commercial property located in a neighborhood of commercial properties on a busy state highway in close proximity to the intersection with two other busy state highways.

(b) The lot is currently occupied by an auto repair/muffler business.

(c) The lot presently includes an access to the adjacent busy state highway to the business. Development of the parcel immediately behind the Applicant's parcel has been proposed. In order to facilitate this development, the Applicant seeks to extend the present access from its business to the adjacent state highway to create access to the aforementioned adjacent parcel. Such creation would reduce the lot area of the parcel presently occupied by the aforementioned auto repair/muffler business.

- (d) This creation of this commercial driveway is the only feasible means of creating access to the adjacent parcel which is required by it. There is no other feasible way to create this access.
- (e) The variance requested is substantial in quantity, but it is not substantial in its impact. The Applicant's property's lot area will substantially decrease, however, the Applicant's property will not lose any parking spaces and the configuration created by the driveway, if approved, would actually enhance vehicular and emergency access to the building located on the parcel.
- (f) A Full Environmental Impact Statement was prepared for this project and submitted to the New Windsor Planning Board. That EIS extensively analyzed all environmental impacts of the project including those related to all aspects of the project. The effects of this application to the physical and environmental conditions in the neighborhood have been mitigated to the maximum extent practical. That Environmental Impact Statement was reviewed by the Zoning Board of Appeals and the findings of the Planning Board with respect to the environmental impact were adopted by the Zoning Board of Appeals.
- (g) A State Environmental Quality Review Negative Declaration was adopted by the Board and a copy of that Negative Declaration is attached hereto and made a part hereof.
- (h) The access to the adjacent state highway has already been created and approved. No change is proposed in that access. The application seeks to extend that commercial driveway, which driveway already exists.
- (i) The Applicant originally sought an interpretation of the Zoning Code of the Town of New Windsor regarding whether or not this driveway would decrease the lot area, but that Application was withdrawn by the Applicant at the public hearing, leaving only the application for variance.
- (j) There appear to be substantial questions of traffic as well as neighborhood impact regarding the development of the adjacent parcel. The application before the Zoning Board of Appeals, however, concerned only the Applicant's parcel, presently occupied by Monro Muffler Brake.

**WHEREAS,** The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variance requested is substantial in relation to the Town regulations but nevertheless is warranted for the reasons listed above.

4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.

6. The benefit to the Applicant, if the requested variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.

7. The requested variance is appropriate and is the minimum variance necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variance.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for 13,008 sq. ft. lot area variance as stated in the introductory paragraph, at the above address, in a C zone as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

**BE IT FURTHER**

**RESOLVED**, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: September 9, 2002.

  
Chairman

12-12-79 (3/99)-5c

SEQR

State Environmental Quality Review  
**NEGATIVE DECLARATION**  
Notice of Determination of Non-Significance

Project Number

Date: June 10, 2002

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The T. New Windsor Zoning Board of Appeals, as lead agency, has determined that the proposed action described below will not have a significant environmental impact and a Draft Impact Statement will not be prepared.

**Name of Action:**

Area Variance for Monro Muffler Brake Site

New York State Route 94, Town of New Windsor, Orange County, New York

**SEQR Status:**

Type 1

☐

Unlisted

☒**Conditioned Negative Declaration:**☐

Yes

☒

No

**Description of Action:**

A lot area variance to allow proposed parking and site access improvements on a 39,884 sf site now occupied by Monro Muffler Brake, Inc. (Section 48-37 of the Zoning Code requires subtraction of the access easement through Monro Muffler (12,892 sf) from the current permitted lot area (39,884 sf).) A ZBA determination is needed as to whether a variance will be required.

**Location:** (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

New York State Route 94, Town of New Windsor, Orange County, New York

## SEQR Negative Declaration

Page 2 of 2

**Reasons Supporting This Determination:**

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

The following information was provided by the Applicant, Martin's Foods of South Burlington, Inc., in relation to this action: an Application for Variance, a Short Environmental Assessment Form dated May 10, 2002, a Supporting Narrative, and accompanying figures showing the existing and proposed conditions relating to this action, and the Findings Statement adopted April 25, 2002, by the Town of New Windsor Planning Board in association with the Applicant's site plan application.

The Zoning Board concurs with the Planning Board's Findings and mitigation described therein. Based on the review of information provided by the Applicant, the Zoning Board has determined that this Unlisted action will have no adverse environmental impacts.

The subject action requires modification of an existing approval by this Board. This area variance will allow modification of an existing site plan, as has been subject of an extensive review by the Town of New Windsor Planning Board. This action will facilitate installation of a secondary access from Route 94 through the Monro Muffler site to service the proposed Hannaford supermarket. The current site plan was previously the subject of a lot area variance on or about September, 1993, to allow the construction of an automobile repair garage in a C Zoning District (requiring a 40,000 square feet minimum lot size) on a 39,884 square foot lot.

Section 48-37 of the Town of New Windsor Zoning Code requires subtraction of the access easement through the subject site (12,892 sf) from the current permitted lot area (39,884 sf). A determination has been made by the Zoning Board that a variance is required to comply with the aforementioned Section.

**If Conditioned Negative Declaration**, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

**For Further Information:**

Contact Person: Patricia Corsetti, Zoning Board Secretary

Address: Town Hall, 555 Union Ave., New Windsor, NY 12553

Telephone Number: (845) 563-4630

**For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:**

Chief Executive Officer, Town / City / Village of

Other involved agencies (If any)

Applicant (If any)

Environmental Notice Bulletin, Room 538, 50 Wolf Road, Albany NY, 12233-1750 (Type One Actions only)

6/10/02 Public Hearing: Monro Maffler #02-32  
House of Apache (Hannaford Bros.).

Name:

Address:

Detra Denton + John Denton 10 Truex Circle - No objection

opposing: Richard Coughlin, f James Swamy Esq. Officer  
(would like to submit arguments by written transcript).

(Mr. Braun spoke but did not sign.)

1 Letter of Objection from VGL.

Date 6/28/02

# TOWN OF NEW WINDSOR

**TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553**

TO Jacobowitz and Mubits, LLP DR. 158 Orange Ave, PO Box 367, Walden, NJ 07586-0367

DATE	CLAIMED	ALLOWED
6/28/02	Refund of CSIRAN (ZBA) re: House of Apache # 02-32	\$ 313.00
Approved Patricia A. Crowe		

Date 6/28/82

# TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553

TO Frances Roth DR.  
168 N. Drury Lane  
Newburgh N.Y. 12550

DATE			CLAIMED	ALLOWED
6/10/82	Zoning Board Mtg		75 00	
	Misc. - 4			
	Kocher - 5			
	Hudson Valley Drilling - 2			
	Weissman - 3			
	House of Apache - 21			
	Donner - 4			
	Westage Corp. - 3			
	Smith - 2			
	Denhoff - 10			
	54		243 00	
			318 00	



PUBLIC HEARINGS

HOUSE OF APACHE

Larry Wolinsky, Esq. and Mr. Tim Miller appeared before the board for this proposal.

MR. TORLEY: Referred by Planning Board for 13,008 sq. ft. lot area variance or easement for Hannaford through the Monro Muffler (Apache) parcel located on Route 94 in a C zone. Besides the applicant, is there anyone in the audience who wishes to speak on this matter? For those of you who wish to speak, our policy is the applicant will speak, he will discuss it with the word members. At that point, we will open it up to the public for your comments and then when that's done, we'll close the public hearing and go back to discussion amongst us and the applicant.

MR. WOLINSKY: For the record, my name is Larry Wolinsky, I'm a member of the law firm of Jacobowitz & Gubits, with me on my right to the board's left is Tim Miller from Tim Miller Associates, who is the project planner. Reason we're before you this evening as you know is that at the conclusion of the SEQRA process after the planning board finished its environmental review of the project and just prior to granting site plan approval of the project, the planning board determined that the access easement that's proposed to exit out onto Route 94 had to be deducted and which goes through the Monro Muffler parcel had to be deducted from lot area and therefore, the lot area variance would be required. We're here tonight having made such an application, actually, our application is in the alternative. We believe that the correct reading of the code does not require subtraction of the accessway from the lot area because the accessway is not precluded from development and I will get into that in a second. However, our other position is that even if the board chooses not to interpret the code in that manner, we would still be entitled to the granting of an area variance. So, without further ado, I would like to first start off with the issue of interpretation. If you just follow along with me here, I think this sets it out fairly specifically. This is

the definition of lot area in the Town of New Windsor zoning code. It says the total horizontal area included within the property lines of the lot but specifically excluding areas of the lot covered by right-of-ways, encumbrances, easements or otherwise precluded from development. Now, I have precluded from development because it is extremely clear from the definition certainly when you read it in conjunction with the next definition that what this means is that you only deduct lot area where you have easements, right-of-ways or encumbrances that are precluded from development. If you read it any other way, there would be no purpose for this language and it makes sense because why because if you can build on something you should be able to take advantage of the lot area and the density calculation, but if you can't build on it, such as possibly a wetland or a utility easement, you shouldn't be able to it effectively reduces the lot, but this doesn't effectively reduce the lot because it can be developed and used. So question is what's the definition of development in the code? And if you look under the definition of development coverage in your code it says percentage of the area of a lot covered by buildings, parking areas, accessory structures and any impervious materials. So the development under the Town of New Windsor zoning code clearly includes quote unquote any impervious materials. So when you read these two definitions again and apply it to what were doing which is creating an accessway which will be paved with impervious materials which we're entitled to do, you'll see that it's not, it should not be precluded and under this definition of lot area, must not be precluded from the calculation of lot area. And we're asking you to hopefully agree with that consideration. The second part of the presentation deals with the area variance, okay, the variance requested is 12,892 square feet, which is essentially the size of the accessway. As you are aware, the variance was recommended for approval by the Town of New Windsor Planning Board. As far as the legal criteria that need to be met in order to meet the issuance of an application for an area variance, I will just go through those quickly and give you in summary what's contained in detail in our application. Number 1, there will be no undesirable change in the character

of the neighborhood. This driveway here is in a commercial area, it's fairly removed from the, it's a part of the project that's, you know, well removed from any residential areas. It's a commercial driveway, there are numerous commercial driveways in this corridor and I think it will be a long stretch to say that this commercial driveway somehow changes the character of the neighbor, this immediate neighborhood. In terms of alternatives to the area variance, there really is no alternatives, this project requires a second means of access. It's required to provide safe and suitable operation. The configuration of the entire site and lack of available additional lands really tender it that this particular location which by the way is an existing access location, in any event. There's an existing access easement on this property and we're just going over that existing access easement for the most part. In terms of the substantiality of the variance, there's no question that in terms of mere quantity, this is a substantial variance, however, I would submit to you that in substance, it's not a substantial variance. The Monro Muffler site in and of itself is not impacted, there's no loss of any parking spaces and it, actually, the planning board had determined it actually provided a better circulation pattern since it now allowed further access around the building which does not presently exist. Effect on physical or environmental conditions in the neighborhood, there's a full EIS that's been prepared, the planning board took better part of a year to go through all of that, analyze it, have technical consultants analyze it. The planning board has issued a Statement of Findings under the State Environmental Quality Review Act, that Statement of Findings I attached to your applications so you've all had the opportunity to look at that, it attaches numerous mitigation measures and conditions on the project. There is, as you have seen from the Findings Statement and as you have read probably there's a lot of traffic mitigation that's being implemented here that was a condition proposed by the planning board that has been conceptually approved by the Department of Transportation. In terms of the area of the adjacent residences, that was at the planning board, again, was the subject of a lot of careful scrutiny. There's

screening, fencing, landscape, buffers and a lot of noise controls built into the plan. Someone in the audience before the meeting asked me whether we would be cutting off the pathway from Truex Circle that presently exists into this property because what happens is a lot of commercial use because of that gets dumped into that neighborhood with, you know, just garbage and stuff and we have in fact eliminated that so we're hoping that will improve those conditions. That particular neighborhood is here this evening that had mentioned that. In terms of self-created hardship, not self-created by the applicant, created by the property owner in a sense that placing of the easement is on there, but it's existing and as you know as a matter of law and in cases of an area variance, it doesn't bar the issuance of an area variance. So we believe with respect to the variance that the benefit of safe and adequate access at this location outweighs any possible detriment associated with this and what we're asking tonight if the board moves forward with a variance to essentially issue a negative declaration, adopt the Planning Board's Statement of Findings and then to grant that variance. And that concludes our presentation. I'd be happy to take any questions at the appropriate time.

MR. KANE: Quick question, Mike, there's an existing easement on that property as it exists right now on the, according to this right here and what you stated is that an existing easement that runs through at this point?

MR. WOLINSKY: Yes, there is, we have a survey.

MR. MILLER: Well, there's a smaller set of plans submitted with the application that shows the location of the existing easement.

MR. KANE: My question is, Mike, is there any way to determine whether this building here if that easement was used as part of the total property for when Midas Muffler went up or was it subtracted out at that point when they did the building?

MR. WOLINSKY: I can answer that for you. What

happened was when Midas Muffler received an approval, that easement did not exist but it still required a small area variance, a lot area variance at that time about 68 square feet or something like that and then subsequently the property owner placed the easement on the property. However, if you look back at the records of the planning board proceedings, and look at the original subdivision map, the planning board knew that an easement was going to be placed there and there's a note to the effect on that old subdivision plan that states that.

MR. KANE: So the building was built before that easement went in?

MR. WOLINSKY: Correct.

MR. KANE: Thank you.

MR. TORLEY: Do you recall the, when you had the, I remember we, there were variances required for the Monroe lot.

MR. MILLER: Original lot required a very small variance.

MR. KANE: My point was if the easement was there and went with the building that would answer some questions but since it went in afterwards, it's a different story.

MR. BABCOCK: They were required to have 40,000 square feet, they had 39,844.

MR. WOLINSKY: Correct.

MR. TORLEY: Small but putting in after that, they put the easement in.

MR. WOLINSKY: The property owner.

MR. TORLEY: Property owner allowed the easement to go through. At no time did the zoning board rule on whether or not that easement then should be counted as a loss.

MR. WOLINSKY: Absolutely.

MR. TORLEY: So you're saying we should interpret the fact that this easement that was put in after the zoning board considered the areas involved shouldn't be considered at all now, any sort of, just go ahead and do it?

MR. WOLINSKY: No, I'm saying that's not what I'm saying.

MR. KANE: No, that was me bringing up to see whether the easement was considered.

MR. WOLINSKY: You're asking about the interpretation.

MR. TORLEY: You're saying the new easement because the easement, the structures you wish to put up and the easement you wish to take basically follows the old easement that was allowed to you by the present owner?

MR. WOLINSKY: Right, but what I'm saying under your code, my interpretation argument that under your code it doesn't matter when an easement goes in, as long as it can be developed, you don't subtract it from lot area, that's the argument.

MR. MILLER: If the property owner were reviewed at the time, they were reviewed having the easement and interpreted the way we have suggested it should be in fact he would have applied that easement totally in an illegal fashion.

MR. WOLINSKY: So I don't know what was in the mind of the property owner at the time, that's the circumstances we found ourselves in when we moved forward.

MR. REIS: Is this proposed easement is this ingress egress on one or the other?

MR. MILLER: It's both.

MR. WOLINSKY: But it's a restricted access.

MR. MILLER: So the egress is only right turn out only.

MR. KANE: Right turn out, right turn in.

MR. MILLER: Left turns in are permitted.

MR. WOLINSKY: Initially.

MR. KRIEGER: For the information of the board, at the planning board, the Department of Transportation said for the time being, they'd permit left turns in, in other words, off Route 94, but they were going to review that after it was in place and that may be changed to not allow those.

MR. WOLINSKY: That's correct.

MR. BABCOCK: We're also going to suggest that at the time of the approval of the original Monro Muffler, the definition of lot area was not the same as it is today.

MR. TORLEY: Did not cover the easements?

MR. BABCOCK: That's correct.

MR. TORLEY: I don't remember when that came in.

MR. BABCOCK: I don't know the date of that but I just talked to Greg Shaw, the gentleman that prepared the paper before and he also agreed that that wasn't.

MR. TORLEY: In a C zone, there's no limitation on developmental coverage, am I correct on that?

MR. KRIEGER: I believe you're right.

MR. BABCOCK: It appears that there is, I don't have a bulk table, there appears to not be any requirement for developmental coverage, Mr. Chairman, if there was, there would definitely have been a variance.

MR. WOLINSKY: If the town wishes to correct that, in other words, if the town ultimately wants any easement, no matter whether it can be developed or not, it should

remove that language from the definition and that takes away the ambiguity.

MR. TORLEY: I would as a personal matter at this point I want to hear the rest of your presentation and public comment but I'd be more inclined to consider this as an area variance without trying to worry about setting a potential precedence for interpretation of easements. Gentlemen, do you have any other questions before I open it up to the public? I'm now opening it up to the public at this time.

MS. CORSETTI: For the record, there were 44 notices that went out to adjacent property owners on May 17, 2002.

MR. TORLEY: So, anyone have any question? Yes? Would you please identify yourself?

MRS. DENTON: Dierdra Denton (phonetic), I just want to let you know this was my first notice so I don't know the story about Hannaford. Was this approved already, the erection?

MR. KANE: They are in the process right now.

MRS. DENTON: Okay, the accessway that you plan to build that will lead directly to Route 94?

MR. WOLINSKY: Yes.

MRS. DENTON: As of now, they're only allowed to turn one way?

MR. KANE: Coming out they'll only be allowed to make a right-hand turn, okay, coming in, they can make a right and they can temporarily they can make a left according to the New York State Transportation Department and they'll review that left into it in the future.

MRS. DENTON: Okay.

MR. KRIEGER: As of right now, they can come any way that they want to come in, but they can only make right going out.



MRS. DENTON: Will that be brought back up after some time?

MR. TORLEY: DOT will continue to monitor this and if in their opinion it becomes a traffic problem, they'll say no left turns into the lot from 94 will be permitted.

MRS. DENTON: Right.

MR. KRIEGER: The answer to your question whether it will be brought up there, yes, here, no.

MRS. DENTON: Another question about the buffer going up along side the Truex line where the fence is where you are going to enclose the fence on the cul-de-sac, will a buffer go up?

MR. MILLER: Landscaping buffer and retaining wall that was handled through the planning board process, I don't have a landscaping plan to show you tonight.

MRS. DENTON: Where would I have access to like the plans?

MR. MILLER: Town Hall, Building Department should have it.

MR. BABCOCK: Planning board department, Myra has that in her file and that will show exactly what's going to happen there.

MRS. DENTON: Okay.

MR. TORLEY: There's a plan with some green drawn on it, it's not a formal landscaping plan.

MR. BABCOCK: Mr. Chairman, they really probably should go to the planning board office to see the final plan, the plans have changed over the year of process.

MR. KANE: So you know this, excuse me, Mike, this review here does not give the approval for the whole project, it's just a question on an easement coming out

to 94.

MRS. DENTON: Okay.

MR. DENTON: Those parking spaces wouldn't affect any of our property right behind, would it, because as it is now, it's a trailer yard, then the Monro, it's right in back of us, it wouldn't be coming anywhere into the circle, would it?

MR. TORLEY: Would you identify yourself?

MR. DENTON: John Denton, Truex Circle.

MR. BABCOCK: Attached to Truex.

MR. DENTON: The retaining wall is going to go off so we won't have anything coming in on the circle?

MR. BABCOCK: No, nobody will go from this project onto Truex Drive.

MR. DENTON: And the lights should be facing that way?

MR. BABCOCK: Yes.

MR. TORLEY: The only changes from the town zoning and building codes we're addressing now are this little access, not little but this access.

MR. DENTON: Right because they sent us a letter.

MR. TORLEY: Lighting and everything else are either not yet determined or will fight the planning and zoning codes.

MR. BABCOCK: That's been all determined, if they go to the planning board office, they can see one of the, it's the latest plan, it's basically waiting for this procedure to get stamped.

MR. CROUGHAN: My name is Richard Croughan from Jim Sweeney's office. Mr. Sweeney, just for the record, had called earlier this morning and was told that there wasn't a public hearing tonight on this matter, he

wanted to be here present to vigorously oppose this. He called the clerk, Arlene had called.

MS. CORSETTI: Didn't call me.

MR. CROUGHAN: So we'd request that we be allowed to put our argument in writing for the board to consider.

MR. REIS: Can you expand on your negative reasoning?

MR. CROUGHAN: Yes, at the planning board, we had argued vigorously against this as well because of the access onto 94 and the congestion that it currently creates or that's currently there. And the DOT has apparently giving the road an F Rating. So that we would argue that allowing this variance would further congest the area.

MR. TORLEY: Have you read the environmental impact report? Have you seen it?

MR. CROUGHAN: Yes, I have.

MR. TORLEY: In that, again, this is not our purview, traffic, in that traffic issues were addressed by the experts both locally and state.

MR. CROUGHAN: I understand that as well so again, I would like to reserve our right to put it in writing and to present it to the board.

MR. TORLEY: I suppose we--

MR. REIS: You may be a minute too late.

MR. CROUGHAN: We did call.

MR. KANE: It was posted in the paper and there was a preliminary hearing and you didn't get the zoning secretary, Pat, is the one who handles the phone calls.

MR. TORLEY: And public notice and by state law, all of them must be by public hearing, it's the planning board that need not be by state law required, we do.

MR. CROUGHAN: I understand.

MR. TORLEY: And the board may or may not vote on this tonight.

MR. CROUGHAN: I understand that as well then we'd ask the board to refer back to the minutes if at all possible from the planning board, the record that was created at that time.

MR. TORLEY: I don't know which is the last, the minutes I have are April 24.

MR. CROUGHAN: I don't have the file with me, sorry, Mr. Chairman.

MR. BABCOCK: They were at the planning board on several occasions, I'm not sure we'd have to find out exactly which one. You do have a copy of every set of minutes from the planning board.

MS. CORSETTI: We don't know, Michael.

MR. BABCOCK: You wouldn't know.

MS. CORSETTI: We don't have the dates, how many meetings they went to.

MR. TORLEY: We'll try to take, your opposition is noted.

MR. CROUGHAN: Thank you.

MR. TORLEY: Anyone else who wishes to speak from the public?

MR. BRAUN: Real, real quickly, this so-called easement that they're trying to define, can you please define it to me in a simple way?

MR. KANE: They want to make a driveway coming out of Midas Muffler to 94.

MR. TORLEY: From Hannaford through Midas' yard to 94.

MR. BRAUN: Right next to the old volunteer?

MR. BABCOCK: Yes, right now, what they want to do when you pull into Monro Muffler right now they want to continue, you can either go to Monro Muffler or continue passed Monro Muffler into Hanaford's. That's what they want to do. They want to use the same entrance, they're going to modify it, of course, but basically, the same entrance.

MR. BRAUN: The other thing is between the property of the old building and Monro, I don't think a three lane road can go through there.

MR. BABCOCK: Actually, that building is going to be demolished.

MR. BRAUN: That helps, thank you.

MR. TORLEY: Is there anyone else who wishes to speak on this matter? Hearing no one, I'll close the public hearing and open it back to the members of the board and the applicant. Gentlemen, any other questions you have?

MR. WOLINSKY: I just wanted to first I don't recall Mr. Croughan saying who his client was. I've heard him say he was here for Mr. Sweeney, but I think it ought to be on the record who his client is cause he's an attorney representing somebody and the notice didn't go to them, it went to the client. So I think we ought to have on the record who his client is if that's okay.

MR. TORLEY: I have no objection to that. Sir?

MR. CROUGHAN: I don't think I have to disclose that.

MR. TORLEY: He declines.

MR. WOLINSKY: Well, I would just tell you that as a matter of law without the attorney disclosing who his client is that any objections that might be put on the record are for a client that's not disclosed and as far as I think the law is concerned does not exist for purposes of this hearing this evening. Everything else

I think was adequately addressed so unless there are any additional questions that the board has for us--

MR. TORLEY: I wish to read a letter that we received into the record, you can have an opportunity to respond to this as well. This is a letter from VGR Associates dated June 3. "Dear Mr. Chairman: As the owner of the Price Chopper Supermarket Shopping Center, we are acutely aware of the existing traffic congestion at the Five Corners intersection. We hope the application for a variance we were noticed for by Martin's Food of South Burlington, Inc. which would appear to be a surrogate for Hannaford Supermarkets will be addressed in the overall context of the Hannaford application. I am confident that we can rely upon the board to take due notice of the devastating affect of the traffic generated on the Five Corners on the residents of New Windsor and the businesses located in the vicinity." Signed VGR Associates. And I cannot read the actual signature. Again, the traffic is part of the planning process. Our duties here and our jurisdiction is restricted to that of the zoning code regarding interpretations and areas variances. Again, my preference is to deal with this accessway as an area variance. I would entertain a motion.

MR. KRIEGER: I think you have to do three things, first of all, there's some question as to whether or not an environmental process is necessary, which I think is easy for the planning board to resolve by simply voting on it rather as was indicated a rather extensive environmental review is involving many stages was had by the planning board and all that is legally necessary, if you care to do so, you may adopt their findings without making findings or inquiry of your own, simply adopt their findings and based on those findings, issue a negative declaration. That will dispose of the environmental question.

MR. TORLEY: I've had a chance to glance over what I consider the relevant parts of the application and I would so agree with our attorney. If any members of the board fell feel they wish to have more time on this before we take a vote on that. Then do I hear a motion accepting the Planning Board's SEQRA documentation?

MR. KANE: So moved.

MR. KRIEGER: And declaring a negative declaration.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	NO
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: Now what's the next point?

MR. KRIEGER: Once you have disposed which you now have of the SEQRA process, first you must consider the interpretation argument and only if you deny that the interpretation that's sought consider the area variance requirement. I remind you that if you should elect to table any question, your motion should be phrased to table it to a specific date, otherwise, you would run into difficulties. I would suggest this is not the kind of application you want to take up without notice.

MR. TORLEY: On that point, any motion by a member of the board has always been in the affirmative, whether or not that does not require you to vote for that motion, just any motion must be in the affirmative. At this point, would anyone like to discuss any further the interpretation aspects of the applicant's desires?

MR. REIS: I've got a question, I'm sure, but I just haven't had an opportunity to go through the whole thing, ingress egress from the project, Larry, what is it off 32, is it two openings, is it one?

MR. WOLINSKY: It's one opening on 32, it's a one opening at a lighted intersection, which is aligned with the Fish and Chips driveway so it's a full lighted intersection at that location, ingress egress, full movements, no restricted, but only after the modifications are made to the Five Corners so that--

MR. REIS: Also including a traffic signal?

MR. WOLINSKY: At Five Corners, not a new traffic signal, but a realignment of lanes and modification of the signal timing so that there's a more definite lane turning left more going right and more definite going straight, there's a lot of confusion there.

MR. TORLEY: On the matter of the interpretation, do you wish to make this, take a motion on this now or wish to table that particular aspect and therefore really the lot area variance aspects to a subsequent date? If anyone wishes to have more time to consider this, please say so, we'll yield to your desires, if possible. That being the case, I would entertain a motion regarding the interpretation.

MR. KANE: Mr. Chairman, I move that we interpret the applicant's request for, how do you phrase this one?

MR. TORLEY: Any suggestions, Andy?

MR. KRIEGER: Interpret the matter so that the proposed easement area will not be deducted from the total lot area for the property now occupied by Monro Muffler.

MR. KANE: Thank you.

MR. KRIEGER: Unless I would certainly say, Mr. Chairman, since you have at least two attorneys in the audience, if they have any other suggestions.

MR. TORLEY: Do you have an alternative?

MR. WOLINSKY: No, that's fine.

MR. KANE: Make that a motion.

MR. TORLEY: After the second, if anyone would like to have any discussions on the motion, do I hear a second?

MR. MC DONALD: We need an interpretation on his motion? I'm, not being an attorney, I don't understand just what we're doing here.



MR. KANE: What we have to decide number one in the public hearing is we have got to decide whether we're going to do an interpretation on it, that's the vote that we're going to pull up, we're going to decide yeah or nay whether we're going to do an interpretation or push it to an area variance.

MR. TORLEY: Applicant is saying that the code should be interpreted in such a manner that their desired construction has no affect on the zoning code or is not affected by the zoning code and therefore, no variances are required.

MR. KRIEGER: If I might and let me have a try at this, basically, Mr. McDonald, basically the question as I understand it is very simple. The area of Monro Muffler, the town has argued that if you subtract the area necessary for the access road to Hannaford's, they don't have enough area left. And the applicant has argued no because of the way the code is written, because of the wording selected by the Town Board in writing the code, that's not true. They, if you don't, if they have the right-of-way as it's proposed it should not be subtracted from the area of Monro Muffler and therefore, Monro Muffler is unaffected, yes or no, do you subtract it is the question.

MR. REIS: May I make a comment?

MR. KRIEGER: Yes.

MR. REIS: I find the code as being ambiguous at least, I don't think the effect of it is, I don't believe that the effect of what is written in the code is being applied accurately, okay. I don't think that, I believe that an easement is reducing the area.

MR. KRIEGER: So that I understand what you're saying is when the law was originally written, it was meant in your view to subtract that but you're not sure the way that they wrote it accomplishes that end.

MR. KANE: So what our vote is to decide whether we're going to make the interpretation or say no we're not

going interpret it, we're going to subtract it and go on to an area variance.

MR. TORLEY: Question on the legal matter for our attorney, should we, if there's a second to the motion and it's rejected, is that legally the same as simply tabling that motion and moving, not voting on it at all and moving to the area variance and if that area variance was granted, it would moot the interpretation, would it not?

MR. REIS: That's right.

MR. WOLINSKY: Mr. Chairman?

MR. KRIEGER: It would make an interpretation moot, I'm not sure that's how the applicant--

MR. TORLEY: That's not what I'm asking right now.

MR. KRIEGER: In other words, can you in essence by tabling the interpretation motion, do them the other way around, do the variance vote before the interpretation vote.

MR. WOLINSKY: Let me give you a solution.

MR. TORLEY: One second, sir, if we tabled if the interpretation, motion was simply tabled and hypothetically speaking, the variance was granted, at that point, we have not gone on the record as stating that given a hard surfaced area any easement across there doesn't count if it's already impervious and developable, you can go ahead and put an easement in if you want and I'm afraid that if we approve that interpretation that's what we're saying and I could be incorrect, legally, but that's what has me worried.

MR. BABCOCK: I can tell you after tonight we're going to modify that definition so this will never happen again.

MR. TORLEY: On the other hand, I do know how long it took us to get the bulk tables updated.

MR. BABCOCK: We're working on them every month we're doing it.

MR. KANE: I'd like to hear the gentleman.

MR. WOLINSKY: Well, I was going to suggest but now I don't know after what I just heard Mike say, I was going to suggest that I would withdraw the request for an interpretation without prejudice and then what that means is be able to re-assert it should the area variance be denied.

MR. TORLEY: Do you concur with that?

MR. KANE: Thank you.

MR. TORLEY: We're now no longer considering the interpretation, we're now only considering area variance. Gentlemen, do you have any questions regarding the area variance?

MR. KRIEGER: By the way, you didn't ask but what the applicant proposes to do is legally permissible.

MR. TORLEY: Thank you, I figured if it wasn't, you'd kick me.

MR. KRIEGER: I wouldn't do that.

MR. REIS: Can I ask another question? Without this being approved, this easement being approved, however it's approved, is Hannaford's stopped?

MR. WOLINSKY: Yes.

MR. REIS: Is that accurate?

MR. WOLINSKY: Pretty much so, yes, the project doesn't work without a second access, no project out there will work without, you'll face this issue at some point in time, whether it's Hannaford or someone else, cause there's vacant commercial property back there.

MR. KRIEGER: Let me answer that question, cause I have considered that yes, it means it certainly would have a

serious negative impact on the application as it exists now, it would cause them to have to redo a lot of work, most of the work in front of the planning board would be rendered moot, it would delay the project, whether it would ultimately defeat the project, they'd have to consider alternatives, you may not safely assume that a, if their application here were denied that that would be the end of Hannaford's application altogether. Would it have a serious impact on them, yes. Would it end it, quite frankly, I doubt it.

MR. TORLEY: Okay, now, gentlemen, do you have any other questions from the applicant regarding the looking at his desires as an area variance? If you wish to delay your decision until another meeting, as a date certain, I would entertain a motion to table this matter, if you wish to do that. Does anyone wish to delay the decision to another meeting?

MR. KANE: One quick question, sir, can you show me how wide that easement's going to be going through on this?

MR. WOLINSKY: I'll defer to Jeff Schiller who's our engineer surveyor.

(Discussion was held off the record)

MR. TORLEY: As part of this development, this sort of unofficial short cut into the Truex Circle will be eliminated so commercial traffic will be taken off that residential street.

MR. KANE: Where that exists right now.

MR. REIS: Can I ask a question, are we open here, Larry, who owns the ambulance building at this point, do you know?

MR. WOLINSKY: You know who the current owner is?

MR. SCHILLER: It's Hughes, I believe, Terry Scott

Hughes, that's correct.

MR. WOLINSKY: That's correct, Terry Scott Hughes.

MR. TORLEY: Gentlemen, do we have any other questions you wish to ask at this time? I'll entertain a motion on this matter.

MR. KANE: I move that we approve the area variance for 13,008 square feet as requested by House of Apache.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	NO
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: So the next step will be going back to the planning board for further discussions, some of which I assume will be open for public.

MR. WOLINSKY: It's up, we've had a public hearing, but planning board normally let's the public speak.

MR. TORLEY: Thank you.

**TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS**

**APPLICATION FOR VARIANCE**

# 02-32.  
Date: 5/16/02.

**I. Applicant Information:**

- (a) Martin's Food of South Burlington Inc., (see attached Proxy Affidavit)  
(Name, address and phone of Applicant) (Owner)
- (b) \_\_\_\_\_  
(Name, address and phone of purchaser or lessee)
- (c) Jacobowitz & Gubits, LLP, Larry Wolinsky, Esq. 158 Orange Ave, Walden, NY 12586 778-2121  
(Name, address and phone of attorney)
- (d) Tectonic Engineering Consultants, 70 Pleasantville Rd., Mountainville, NY 10963 #534-5959  
(Name, address and phone of contractor/engineer/architect/surveyor)

**II. Application type:**

- ( ) Use Variance ( ) Sign Variance  
( X ) Area Variance ( X ) Interpretation

**III. Property Information:**

- (a) C New York State Route 94 (Monro Muffler) 70-1-2.1 39,844  
(Zone) (Address of Property in Question) (S-B-L) (Lot size)
- (b) What other zones lie within 500 feet? R-4
- (c) Is pending sale or lease subject to ZBA approval of this Application? No
- (d) When was property purchased by present owner? 7/91
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? Yes. If so, when 3/22/93
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning/Fire Inspector? No
- (h) Is there any outside storage at the property now or is any proposed? No

**IV. Use Variance.**

- (a) Use Variance requested from New Windsor Zoning Local Law,  
Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.

(Describe proposal) (See attached narrative)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (b) The legal standard for a "Use" Variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

V. Area Variance:

(a) Use Variance requested from New Windsor Zoning Local Law,  
Section 48-9, Table of Use/Bulk Regulations Regs., Col. C.

	Permitted	Proposed or Available	Variance Request
Min. Lot Area	40,000 sq. ft., 39,844* sq. ft.	26,992 sq. ft.	12,892 sq. ft., 13,008 sq. ft.
Min. Lot Width			
Reqd. Front Yd.			
Reqd. Side Yd.			
Reqd. Rear Yd.			
Reqd. Street Frontage*			
Max. Bldg. Hgt.			
Min. Floor Area*			
Dev. Coverage*			
Floor Area Ratio**			
Parking Area			

✱ Prior variance

\* Residential Districts only

\*\* Non-residential Districts only

(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3) whether the requested variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance:

See attached narrative

VI. Sign Variance:

(a) Variance requested from New Windsor Zoning Local Law,

	Requirements	Proposed or Available	Variance Request
Sign # 1			
Sign # 2			
Sign # 3			
Sign # 4			

- (b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or oversized signs.

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- (c) What is total area in square feet of all signs on premises including signs on windows, face of building and free-standing signs? \_\_\_\_\_.

**VII. Interpretation.**

- (a) Interpretation requested of New Windsor Zoning Local Law,  
Section 48-37.

- (b) Describe in detail the proposal before the Board:

See attached narrative

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**VIII. Additional comments:**

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaped, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage).

See attached narrative

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**IX. Attachments required:**

- X Copy of referral from Bldg./Zoning Inspector or Planning Board.  
X Copy of tax map showing adjacent properties.  
X Copy of contract of sale, lease or franchise agreement. Copy of deed and title policy.  
X Copy of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.  
N/A Copy(ies) of sign(s) with dimensions and location.  
X Two (2) checks, one in the amount of \$150,00 and the second check in the amount of \$500,00, each payable to the TOWN OF NEW WINDSOR.  
X Photographs of existing premises from several angles.

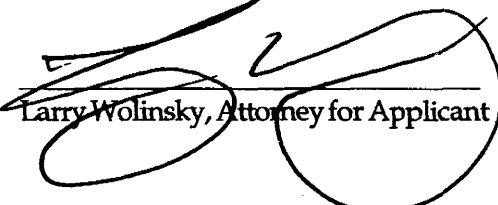


**X. Affidavit.**

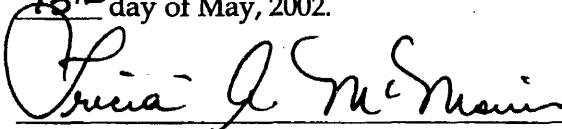
Date: 5/13/02

STATE OF NEW YORK )  
                                  ).SS:  
COUNTY OF ORANGE )

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/her information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

  
Larry Wolinsky, Attorney for Applicant

Sworn to before me this  
13<sup>th</sup> day of May, 2002.

  
Notary Public of the State of New York

TRICIA A McMORRIS  
Notary Public, State of New York  
No. 01MC6015437  
Qualified in Ulster County  
Commission Expires October 26, 20 02

**XI. ZBA Action:**

(a) Public Hearing date: 6/10/02

OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NY

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

PLANNING BOARD FILE NUMBER: **00-15** DATE: **05-03-2002**

**00-22**

APPLICANT: HOUSE OF APACHE, LTD (MONROE MUFFLER)

104 SOUTH CENTRAL AVE (SUITE 20)

VALLEY STREAM, NY

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED 11-13-2002  
FOR (SUBDIVISION/SITE PLAN) SITE PLAN  
LOCATED AT RT. 94 - VALLS GATE (PORTION OF HANNAFORD FOOD PROJECT)

ZONE C

DESCRIPTION OF EXISTING SITE: SEC: 70 BLOCK: 1 LOT: 21

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

**LOT AREA VARIANCE**

*Michael B. Cock*  
MICHAEL B. COCK, BUILDING INSP.

REQUIREMENTS

ZONE **C** USE **B-5**

	<b>REQ'D</b>	<b>PROPOSED OR AVAILABLE</b>	<b>VARIANCE REQUEST</b>	
MIN. LOT AREA	<b>40 000</b>	<b>26 992</b>	<b>13008</b>	<b>*</b>
MIN. LOT WIDTH	<b>200</b>	<b>192 **</b>	<b>**</b>	
REQ'D FRONT YARD	<b>60</b>	<b>71</b>	<b>—</b>	
REQ'D SIDE YARD	<b>30</b>	<b>25 **</b>	<b>**</b>	
REQ'D TOTAL SIDE YARD	<b>70</b>	<b>89</b>	<b>—</b>	
REQ'D REAR YARD	<b>30</b>	<b>115</b>	<b>—</b>	
REQ'D FRONTAGE	<b>N/A</b>	<b>—</b>	<b>—</b>	
MAX. BLDG. HT.	<b>12' FT.</b>	<b>20</b>	<b>**</b>	
FLOOR AREA RATIO	<b>0.5</b>	<b>0.11</b>	<b>—</b>	
MIN. LIVABLE AREA	<b>—</b>	<b>—</b>	<b>—</b>	
DEV. COVERAGE	<b>—</b>	<b>—</b>	<b>—</b>	
O/S PARKING SPACES	<b>32</b>	<b>35</b>	<b>—</b>	

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:  
(914-563-4630) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF  
APPEALS.

**\*\* Previous Variance obtained 3-22-93**

**\* Previous Variance for 39844 sf lot granted 3-22-93**

CC: Z.B.A., APPLICANT, P.E. ENGINEER, P.B. FILE

HANNAFORD'S FOOD & DRUGS (00-15)

Larry Wolinsky, Esq. appeared before the board for this proposal.

MR. PETRO: This involves development of 55,200 square foot retail store on the 5.5 acre site. Application was previously reviewed at the 13 December 2000, 15 November 2000, 24 January 2001, 14 February 2001, 14 March 2001, 28 March 2001, 25 April 2001, 23 May 2001, 25 July 2001, 22 August 2001, 23 January 2002 and 13 February 2002 planning board meetings. I'd like to note that for the minutes just in case some wise guy reads it and thinks we're moving too quick. Go ahead.

MR. WOLINSKY: I can certainly tell you from the point of the applicant that you are not moving too quick. I'm Larry Wolinsky representing Hannaford. We're here this evening regarding the completion of the SEQRA process and also site plan approval. We believe we have addressed everything that could possibly be addressed. I commend the board for putting our feet to the fire which it has done very thoroughly and diligently. And we would ask the board to first consider the Findings Statement and then go on for site plan. That's all I have to say.

MR. PETRO: Mark, why don't you lead us through with the findings, give us the right momentum here to get going?

MR. EDSALL: Well, attached to my comments is a document 16 pages long, I'll save you the trouble of having me read it to you, I don't think that's necessary or appropriate. The Findings Statement basically takes all the conclusions as it may be from the SEQRA review and outlines the various areas of the evaluation and the conclusions and then it's boiled down starting on page 12 with the findings of the planning board as to the potential impacts and how the applicant has mitigated the impacts with the improvements that they're proposing. The document originated as part of a discussion between the applicant's attorney and the town, myself being the town's representative during the workshops. We have

made I believe four revisions, Larry, roughly?

MR. WOLINSKY: At least, yeah.

MR. EDSALL: So it's gone through a couple iterations. At this point, I believe it's complete and acceptable for the board to adopt. There are a number of off-site improvements that are required, they are all referenced in this Findings Statement as elements that must be included in the construction to support the findings that the impacts have been mitigated and as well as there are some other issues as to the on-site screening, lighting and so on, how that was reviewed and how it was designed and as to the board's findings that those potential impacts have been mitigated as part of the design of the actual site itself. So on-site and off-site have been evaluated and the conclusions are listed in this proposed Findings Statement. Larry, anything that maybe I didn't touch on?

MR. WOLINSKY: No, I think that's a comprehensive description.

MR. PETRO: Do any of the board members have any comments at this time about reading the Findings Statement or any other comments they'd like to make? If not, I'll accept a motion to accept the Findings Statement for the SEQRA review process of Hannaford's Food and Drug site plan.

MR. LANDER: So moved.

MR. ARGENIO: Second it.

MR. PETRO: Motion has been made and seconded that the New Windsor Planning Board accept the Findings Statement for the Hannaford's Food and Drug site plan on New York States 32 and 94 as written and also authorize any circulation or publication as required by the SEQRA regulations according with these findings. Any further discussion from the board members? If not, roll call.

ROLL CALL

MR. BRESNAN	AYE
MR. ARGENIO	AYE
MR. KARNAVEZOS	AYE
MR. LANDER	AYE
MR. PETRO	AYE

MR. PETRO: Which brings us to the next point of the meeting. I had believed earlier that we were really pretty far along with this and was my understanding that frankly we were going to do a final approval tonight, just normal subject-to's that would normally come up. It's been brought to my attention that we need to have some other work done on surrounding properties, namely the Monro Muffler and Long John Silver applications. I understand that the Monro Muffler needs to go to the New Windsor Zoning Board for clarification or a variance, one or the other, and I guess we're going to look for a variance for an easement, is that correct?

MR. EDSALL: Yeah, I had spoke with Mike Babcock as well because ultimately, he has to make a determination as the zoning officer as to what, how that definition applies to the site and he has advised me that my understanding is his interpretation. So really what we need to do is have that either interpreted differently or just obtain an area variance for that related site plan amendment which is Monro Muffler.

MR. PETRO: I want to make it clear so everybody is under the same understanding that I am. I realize that the applicant's attorney and engineers probably don't agree with the town in the way they read our laws and what our engineers and maybe our attorney are saying, but there's one thing that is clear and one thing I feel that is definitely of precedence and that is that since we have been here that we have asked everybody to get the variance for the easements subtractions that you're talking about for the last 11, 12 years that I have been here and probably long before I got here. So what we do for others we have to ask you to do the same. In other words, there is no reason in the world we wouldn't ask you to do the same, but that's the precedence that was set, we need to ask you to go to

the zoning board and get the necessary variances or interpretation, whatever you find is easier.

MR. EDSALL: Mr. Chairman, would it be acceptable to just have the record be clear that the planning board has looked at the site plan and as well our office has and notwithstanding the fact that there is a technical reason why they need an area variance, they have, as part of their proposed amendment, will be able to provide all the necessary parking and relocated the dumpster and all the facilities that are needed to support the Monro Muffler facility are being accomplished. It's purely a numerical subtraction that the area has to come out to provide that through shared road accessway. So the site plan itself is in a form that we believe is complete and acceptable, maybe some minor corrections before it can be stamped, but they have demonstrated that the site, even with the area subtracted, supports the use. And it might be worthwhile for the zoning board to know that the board concurs with that, so that they don't believe that this area is some way a subtraction from the ability to--

MR. PETRO: I believe the board would give a positive recommendation to the zoning board. Anybody disagree with that?

MR. ARGENIO: I agree.

MR. PETRO: But I just think it's part of the procedure.

MR. EDSALL: I don't want them to think you haven't seen it yet.

MR. WOLINSKY: We certainly appreciate the fact that you will give us a positive recommendation. I don't want to, I'm not going to debate the issue here because obviously, I disagree with that interpretation but that is what the ZBA is for. The only other thing that I would ask what we'll probably do is take the time to get our, while we're going through that process, to take the time to get our plans, whatever issues remain from a technical end all wrapped up so that as soon as we get that variance, we can hopefully be in a position

to have the plan stamped. So as long as we can move forward with whatever bond estimates or process we have to go through then and we're not totally stopped, I think we can weather the storm.

MR. PETRO: We did receive a letter, I just want to note for the minutes from New York State DOT that did agree with your forms of mitigation and frankly, I guess you did a good job and they seem to approve of your, the way that you're going to handle it. So I want to let you know that we received and filed that. Thank you.

MR. EDSALL: Jim, in the interim, as Larry said, we're going to try to make some progress, I'm going to provide the applicant with whatever final comments I have for all three applications so that at the same time when they're moving on that at the ZBA, we can get the plans all finished up and be done. We'll expedite the referral.

MR. PETRO: How about your department, anything that you can take to expedite anything, look over anything yet or you think it's moving too quickly?

MR. BABCOCK: No, if there's building plans, we can start.

MR. WOLINSKY: Can we get on the next agenda of the ZBA?

MR. BABCOCK: Actually, the way that works we'll send the referral over and then you have to contact them. Depends on, we just had one Monday, so it's two weeks, I would assume. Mark has to do a referral letter, right?

MR. EDSALL: Franny's agreed we'll expedite that.

MR. PETRO: You'll be on the next agenda here whenever you're ready.

MR. WOLINSKY: Thank you.

**FINDINGS STATEMENT**  
**State Environmental Quality Review Act**

**Hannaford Food & Drug Site Plan Application**  
**Town of New Windsor**

Pursuant to Article 8 (State Environmental Quality Review Act-SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the Town of New Windsor Planning Board, as lead agency makes the following findings.

**Name of Action:** Hannaford Food & Drug

**Description of Action:** Construction of a 55,200 SF food and drug store and related parking facilities; proposed parking and site access improvements at Monroe Muffler and proposed site access improvements at the former Long John Silver's

**Location:** Near and around New York State Routes 32 and 94, Town of New Windsor, Orange County, New York

**Agency Jurisdiction:** Town of New Windsor Planning Board

**Date Final EIS Filed:** February 25, 2002

On May 23, 2001, this Planning Board, after having conducted a public scoping process, adopted a final scoping document and directed the applicant to prepare a draft EIS in accordance with that document. Specifically, the scoping document required the applicant to consider and address all EIS elements required under 6 NYCRR Part 617 as well as the following identified areas of environmental concern: impact on water resources; impact on transportation and traffic; impact on utilities; impact on wetlands; impact on geology and soils; noise impacts and visual impacts. A draft EIS was submitted and then deemed complete on July 25, 2001. A public hearing was conducted on August 22, 2001. A final EIS was submitted and then deemed complete on February 13, 2002. Having thoroughly considered and reviewed the draft and final EIS, the submitted plans and all information derived at the public hearing and during the public comment period from involved and interested agencies, members of the public and the Board's own consultants, the Board hereby relies on the following facts, conclusions and specific findings in rendering its SEQRA determination in this matter:

**A. Detailed Project Description:**

**Primary Action**

Martin's Foods of South Burlington, Inc. (the applicant), a wholly owned subsidiary of Hannaford Bros. Co., proposes to construct a 55,200 square foot state of the art supermarket with associated parking and utilities on a 5.443-acre site located at NYS Routes 32 and 94 in the



Town of New Windsor, Orange County, New York. The front building facade will face north where the majority of parking will be provided. Truck receiving areas for the supermarket will be located at the southern side of the structure, accessed via a two-way driveway at the rear of the building.

The applicant has an agreement with the property owner for a long-term land lease. The proposed Hannaford Food & Drug Supermarket will include a bakery, delicatessen, general merchandise area and a full-service pharmacy with separate health and beauty aids section. The facility would be similar to the store located in the Town of Wallkill on Tower Drive. The proposed supermarket and related ancillary improvements are permitted uses under the current Design Shopping C zoning designation for the site. Building coverage (floor area ratio) for the proposed project is just over 23% (i.e., 55,200 square feet of floor area / 237,097 square feet of lot area). Up to 50% building coverage is allowed in the C zone.

The existing Friendly's Restaurant on the site would discontinue operations. This building, pavement and two existing curb cuts would be removed as part of the proposed activities.

### **Related Actions**

Associated with the primary action are two applications to amend previously approved site plans on adjoining properties. These amendments and their subsequent implementation as part of this project will improve access conditions to the supermarket site and surrounding area. They are:

- 1) Monro Muffler site on Route 94: the amendment proposed is to construct a secondary access driveway within an access easement extending from the Hannaford site north to Route 94.
- 2) Former Long John Silver's site on Route 32: the amendment proposed is to relocate and improve the existing driveway on the property to create a four-way intersection with the new main signalized access to the Hannaford supermarket. Implementation of this improvement will also provide the opportunity for McDonald's to utilize a full service intersection

### **Site Access**

Primary vehicular access to the property is proposed from NYS Route 32 at a new signalized intersection, approximately 800 feet south of the Five Corners. A secondary access is proposed via a limited access driveway to NYS Route 94. Demolition of a vacant, small commercial building and reconfiguration of the Monro Muffler site would be necessary to provide this secondary access. Means of access to the site are depicted on the site plan for the proposed project.

### **Parking and Loading**

A total of 304 off-street accessory parking spaces are provided. This number includes eight handicapped parking spaces. The majority of the spaces will be located in five double-

loaded rows in front of the proposed building. Parking spaces will also line the perimeter of the parking lot. The parking field will also include areas for cart corrals. Loading areas, building mechanical equipment, and refuse dumpsters will be located to the rear of the proposed structure. The loading areas will be accessed via a 30-foot wide, two way drive. Parking and loading spaces and means of internal circulation are depicted on site plan for the proposed project.

### **Drainage**

Stormwater runoff from all new impervious surfaces will be collected via a series of pipes and catch basins, treated, detained and released at a slower rate than pre-developed conditions. Stormwater treatment will be accomplished via a stormwater treatment system (Stormceptor) in order to remove pollutants by sedimentation and floatation. Reduction in stormwater discharge rates will be accomplished by on-site detention through two separate systems of underground storage pipes and by controlled release of the outlet structures.

The majority of the on-site detention system will be located beneath the parking lot in front of the supermarket. A portion of the system will also be located beneath the secondary access driveway and landscaped areas on the Monro Muffler site plan. All drainage improvements are illustrated on the site plan for the proposed project.

### **Landscaping**

Extensive landscaping will be installed along the perimeter of the site, including along its eastern and southern property lines within the setback area from Route 32 and along the secondary access driveway to Route 94. Additional landscaping will also be included in the parking areas, at the driveway entrance at Route 32 and along the northerly property line. All proposed landscaping is illustrated on the site plan for the proposed project.

### **Lighting**

The project site will be illuminated at night to provide pedestrian and vehicle safety throughout the project site and along circulation drives. The site lighting will consist of pole-mounted fixtures with enclosed light sources. The lighting is designed to generally provide between three and four foot-candles of illumination, on average, on pavement surfaces. A hierarchy of lighting will be utilized, including double-mounted fixtures within the parking area and building-mounted lighting on the building's western facade. The parking areas will be illuminated to provide light levels sufficient for pedestrian safety, parked car security and clarity of vehicular circulation, while meeting local code requirements. All lighting is oriented and shielded so that off-site light spillage is minimized. All proposed lighting and lighting details are depicted on the site plan for the proposed project.

### **Signage**

There will be a combination of signage on the project site. There will be signage affixed to the building facade similar to other Hannaford supermarkets. There will also be two

freestanding signs. One freestanding sign will be located on the east side of the Route 94 secondary access driveway, The second will be located on site approximately 160 feet north of the main access driveway at Route 32. All signage is depicted on the site plan for the proposed project.

**B. Site and Site Area Characteristics:**

The site is located just south of the "Five Corners" intersection of New York State Routes 94, 32 and 300 in the Vails Gate section of the Town of New Windsor. The municipal boundary between New Windsor and the Town of Cornwall is located approximately 500 feet south of the property. The project site is bordered by Route 32 on the west, and has approximately 581 feet of road frontage on that road.

The site of the proposed supermarket is situated on New Windsor tax parcels 70-1-16.1 and 70-1-16.2. Together these two tax lots comprise 5.443 acres. The supermarket and its parking facilities will be built on these two existing tax lots which will be merged as a condition of approval.

A Friendly's restaurant and parking lot are situated on the northwestern corner of the site of the primary action, covering approximately 1.173 acres of the site. The balance of the project site is currently undeveloped and wooded. Topography is varied, with the site generally draining from a high point at the south end to the north (i.e., toward Route 94) Approximately 75% of the site has slopes of less than 10%, 19% of the site has slopes between 10 and 15% and 6% of the site has slopes in excess of 15%.

Soils on the site have been disturbed over the years and consist mostly of Mardin gravelly silt loam, a moderately well drained soil. The site was occupied by a residence in the distant past and was likely used for agricultural purposes.

The project site is zoned C, Design Shopping. Land Use in the vicinity of the site includes commercial/retail businesses, single-family residential housing and vacant wooded land. Land along Routes 32, 94 and 300 in the Five Corners area is predominantly commercially developed.

The site is currently served by public water, sewer, telephone, gas and electric service.

The proposed use of the site as a supermarket is permitted in the C, Design Shopping zoning district subject to site plan approval by the Planning Board. The project, as proposed, complies with all zoning requirements and requires no variances from the Town's zoning code.

## **C. Impacts, Mitigation Measures and Specific Findings**

### **Water Resources**

#### **a) Stormwater:**

A comprehensive stormwater management study dated July, 2000 and revised January, 2001 was prepared by Tectonic Engineering Consultants and is included as Appendix D in the EIS. The study has been thoroughly reviewed by the Town Engineer who has determined that it was prepared in accordance with proper engineering practices and sets forth reasoned and supported conclusions.

Storm flows in and around the project site are currently controlled by the existing stormwater drainage systems in Route 94 and Route 32. The proposed development will change the site drainage characteristics by increasing the amount of impervious area on the property. Impervious surfaces will increase from 0.90 acres in the existing condition to 4.53 acres with the proposed supermarket and parking lot areas. This will result in an increase in the volume and rate of runoff from the site which has the potential to adversely impact the site and surrounding area unless mitigated.

The project's stormwater system design, as set forth in the site plan and supported by the drainage study, mitigates the potential for adverse stormwater impacts. The stormwater design incorporates the use of subsurface stormwater detention structures which will capture the stormwater runoff and release it at a slower rate than existing, undeveloped conditions. The stormwater system is also designed to treat the stormwater to remove pollutants. This treatment will be accomplished by the use of Stormceptor units which will remove approximately 70% of total solids and 95% of oils contained in the runoff.

Based on the design of the stormwater system as reflected on the site plan and analyzed in the drainage study, the Board hereby finds that there will be no significant adverse impacts from surface water runoff from the proposed project. As a condition of approval, this Board will further require the applicant to comply with the New York State General Permit for Stormwater Discharges as applicable to this project.

#### **b) Erosion and Sedimentation:**

The movement of soils during project construction may adversely impact nearby surface waters. However, the project has been designed to minimize sedimentation impacts to these waters during construction. The plans for the project incorporate the use of the following erosion and sedimentation control measures: erosion control barriers (i.e. silt fences and hay bale filters), stabilization of exposed areas and stockpiled materials, tracking pads and dust control. Based on the use of these measures, the Board finds there will be no significant adverse impacts from erosion and sedimentation to nearby water resources. As a condition of approval, this Board will require that sedimentation and erosion controls are in place prior to commencement of construction and continue in place as necessary throughout the construction process and until

permanent stabilization has been established. Further, the applicant must comply with the sedimentation and control measures required by the New York State General Permit for Stormwater Discharges as applicable to this project.

### **Wetlands**

There are no regulated wetlands on the property. There is however an isolated 0.04 wet area at the northern end of the property which will be filled as part of the proposed project. Although not required to, the applicant has committed to filling this wet area in accordance with the conditions of US Army Corps of Engineers (ACOE) Nationwide Permit #39, which authorizes the filling of up to 0.50 acre of wetland without pre construction notice to ACOE. The Board finds filling of this small, isolated wet area in accordance with Nationwide Permit #39 is sufficiently protective of the environment and concludes it will not result in a significant adverse impact to wetlands. The Board further notes that this wet area contributes to an off-site drainage problem for the adjoining residential neighborhood. The applicants filling of this wet area and redirecting of drainage to the applicant's system will ameliorate this problem and thereby constitutes a beneficial impact of the project.

### **Geology and Soils**

The project documents indicate no impact on geologic resources. No blasting of bedrock is required for this project. The potential for soil loss is greatest during construction. As already detailed, the project incorporates erosion control measures that minimize the potential for soil loss. For these reasons, the Board finds that the project will not result in any significant adverse impacts to geology and soils.

### **Cultural Resources**

Stage 1 and Stage 2 historical and archaeological investigations were conducted for the project. These studies found no significant historical or archaeological resources exist at or near the site. The studies, which were prepared by cultural resource experts and reviewed by the Planning Board and its consultants, conclude that no further investigations are required. The Planning Board concurs with this conclusion and finds that the project will have no adverse impact on cultural resources.

### **Utilities**

#### **a) Water Supply:**

The Board's engineer has thoroughly reviewed the water service plans for the project and has advised the Board that no significant adverse impacts are anticipated.

The applicant has demonstrated, based on similar sized stores, that the operation of a 55,200 square foot food and drug store on the project site requires 3,800 gallons of water per day.

The project is located in an existing water district and will be serviced by that district. The district is able to service the proposed project. The Board finds that the project's minimal water demand will not significantly impact the water district's water supply.

The project will connect to the existing main in Route 94. In addition, a 12 inch cross connection between the existing eight-inch water main on the north side of Route 94 and the dead ended eight- inch water main on the south side of Route 94 will be provided. The proposed 12-inch main will also connect to a six inch main in Truex Circle to provide a new loop connection with the six-inch water main located at Truex Circle. The 12" water main will be extended to the southwestern portion of the site. The Board finds that looping the water system in this manner will result in a beneficial impact to the existing water district.

All new water mains and appurtenances to connect this project to the water system will be installed at no cost to the water district. Therefore the Board finds that there will be no significant fiscal impact from this project on the water district or its existing users. As a condition of approval the Board will further require that all work involving water connections must be done in accordance with applicable standards of the Town of New Windsor and Orange County Department of Health.

**b) Sewer Service**

The Board's engineer has thoroughly reviewed the sewer service plans for the project and has advised the Board that no significant adverse impacts are anticipated.

The site is located in Sewer District#14. An existing 10-inch sanitary sewer is located in NYS Route 32 adjacent to the site. The existing sewer line in Route 32 connects to an existing 10-inch line in Route 94 just north of the project site, which conveys effluent to the New Windsor sewage treatment plant located to the east on the banks of the Hudson River.

The project is anticipated to generate approximately 3,800 gallons per day of sewage. Friendly's is already generating approximately 2,210 gallons per day from the project site. The net increase of approximately 1,590 gallons per day from the proposed project is not significant and the Board finds there will be no significant adverse impact on the Town's ability to collect and treat sewage. As a condition of approval the Board will further require that all work involving sewer connections must be done in accordance with applicable standards of the Town of New Windsor, Orange County Department of Health and New York State Department of Environmental Conservation as applicable.

Finally, the Town is considering improving sewer service in the immediate vicinity of the project site by installing a force main in Route 94. The applicant has agreed to help offset the cost of this improvement by contributing an amount not to exceed \$50,000 to the Town. The precise amount of this contribution shall be determined prior to stamping of the plans by the Planning Board Chairman.

## **Noise**

A Sound Impact Assessment was prepared by Cavanaugh Tocci Associates, Inc. for the proposed project and is contained in Appendix "E" of the EIS. The study has been thoroughly reviewed by the Town Engineer who has determined that it was prepared in accordance with proper engineering practices and sets forth reasoned and supported conclusions.

Sound monitoring was conducted at the project site to measure the level of background existing sound. Sound in this area is dominated by traffic noise from Route 94 and Route 32. Noise during daytime hours (6:00 AM to 10:00 PM) result in background sound levels which range between 45 and 55 dba. During the early morning hours, when traffic is light, background sound levels drop to as low as 43 dba.

Section 48-17.5 of the New Windsor Code defines acceptable limits for environmental sound produced by development such as the proposed supermarket in residential zoning districts in the Town. These limits are:

- (1) From 8:00 AM to 9:00 PM: 65dba
- (2) From 9:00 PM to 8:00 AM 56dba

Principal sources of noise from the proposed project include store mechanical equipment for refrigeration and ventilation which will operate continuously throughout the day and night and truck unloading activities. The following measures have been incorporated into the design and operation of the project site to mitigate noise impacts and to keep those impacts at or under the levels required by the Town of New Windsor Code.

- use of acoustical louvers for the compressor room ventilation opening located at the rear of the store
- use of low speed fans and variable speed drives for roof top air-cooled condensers
- addition of a parapet wall extending four feet above the top of the roof on the east side of the building
- placement of air handling units a minimum of 30 feet from the edge of the roof
- limiting use of the trash compactor to between the hours of 8:00 AM to 9:00PM and trash pickup to between 6:00AM and 5:00PM
- enclosure of the loading dock at the south side of the building and equipping it with hydraulic dock levelers for tractor-trailer unloading
- Limiting tractor-trailer deliveries to daytime hours (8:00AM to 9:00PM).

Requiring all truck engines and refrigeration equipment to be shut off while trucks are unloading

With the institution of the above measures, all of which will be made conditions of site plan approval, the Board finds that noise emissions from the project will meet or exceed minimum standards required by the New Windsor Code and no adverse noise impacts will occur. Further, the Board requires the applicant to conduct a post construction noise evaluation study to ensure that the above measures are effective in the actual operating state. The post construction noise survey will be performed at the south and east property lines (i.e. nearest to residential areas). The test will measure sound levels with design and operation measures in place to ensure conformance with Town Code requirements. Adjustments to noise measures will be made if necessary to bring the facility into compliance.

### **Visual Resources**

The project site partially adjoins a residential neighborhood. Construction of the project will remove existing wooded area (i.e. approximately 4.64 acres), which presently buffers the residential neighborhood from the Five Corners area. Following construction of the project, views of the site from adjacent residential properties will change. The project site will have a commercial/retail appearance similar to other developed properties in the Five Corners area.

Various measures have been undertaken to minimize the visual impacts of the project to the nearby residential neighborhood. These measures utilize a combination of grading, landscaping and fencing to minimize visual impacts. Specifically, grading of the site would lower it at its south end lessening the height appearance of the building at that location. A minimum building setback of 50 feet from the easterly property line and 59.5 feet from the southerly property line has been maintained to provide distance buffer. Approximately 20 feet along the easterly side and 30 feet along the southerly side of the building will be landscaped to serve as screening. Along the east and south property boundaries, a solid wood fence, six feet in height would sit atop tiered retaining walls to provide solid screening. It is important to emphasize that these measures were developed in consultation with adjoining residential property owners who were all consulted about the type and extent of screening required. The results of this effort are depicted on the site plan and landscaping plan for the project. Moreover, the EIS contains graphic demonstration of the effectiveness of these measures. The Board finds that implementation of these measures will mitigate the visual impacts of this project to the maximum extent practicable.

A potential visual impact associated with operation of the supermarket facility is light spillage onto adjoining properties. As described above, a lighting plan has been prepared which minimizes spillage through the use of shielding and orienting fixtures away from adjoining properties. This lighting plan is part of the site plan to be approved by the Planning Board. The Board finds this lighting plan adequate and determines that there will be no significant adverse impact from project lighting onto adjoining properties.



## **Traffic**

Traffic is the single most important environmental concern associated with the proposed project. Toward that end, traffic analyses have been conducted to assess the traffic impacts of the project on surrounding roadways. These analyses are embodied in a Traffic Study and supplementary traffic reports prepared by Creighton Manning Engineering. These analyses have been the subject of thorough review by this Board, its consulting engineer, its consulting traffic engineer and the New York State Department of Transportation ("NYSDOT"). All parties have concluded that the traffic analyses have been prepared according to accepted methodologies for assessing traffic impacts.

The traffic analyses studied five intersections, which were determined by the Board and NYSDOT to be potentially impacted by the proposed project. These intersections are: "Five Corners," Route 94/Old Temple Hill Road, Route 32/Old Temple Hill Road, Route 300/Old Temple Hill Road, and Route 32/Jacqueline Street. Proposed primary and secondary driveway accesses to the site were also studied.

(a) Five Corners - The Five Corners intersection currently operates at a Level of Service F with existing delays during the peak hours of approximately 220 seconds per vehicle. This delay will increase even if the supermarket is not built, as a result of background growth, to about 240 seconds per vehicle by 2002. If the supermarket is built and no improvements to Five Corners are undertaken, the delay would further increase to approximately 300 seconds per vehicle. Consequently, the supermarket's impacts without improvements are in the order of 60+/- seconds. The applicant has proposed a modified lane arrangement and signal phasing improvements at the Five Corners intersection. With these improvements, delays will be decreased at the Five Corners intersection by over two minutes resulting in overall delay dropping to 98+/- seconds per vehicle. These improvements not only mitigate the supermarket's impact of 60+/- seconds but also fully mitigate background growth and reduce existing delays by 122+/- seconds.

(b) Route 94/Old Temple Hill Road - This unsignalized intersection currently operates at a level of service E. Without the proposed project, the intersection will operate at a level of service F by the end of 2002 due to the completion of other approved projects in the area. With the proposed project, the intersection will continue to be F. The applicant has proposed installation of a traffic signal at this intersection at its sole cost and expense before opening of the supermarket provided NYSDOT approves its installation. In the event that NYSDOT does not approve a signal at that time, the applicant has further proposed to monitor the intersection after opening of the supermarket. Specifically, the applicant will prepare a traffic study at the conclusion of its first year operation, its second year of operation and its third year of operation to further assess the need for a signal at this location. If based on any of these studies, NYSDOT authorizes the

installation of a signal, the applicant at its sole cost and expense will cause it to be installed. If at the end of the third year of operation, NYSDOT determines that no traffic signal will be permitted, the applicant shall be released of any further obligation to install a signal. If a signal is installed at this intersection, it will operate at a level of service B.

(c) Route 32 /Old Temple Hill Road - This is a signalized intersection. It currently operates at an overall level of service C and will continue to operate at that same level of service after the supermarket is built.

(d) Route 300/Old Temple Hill Road - This is an unsignalized intersection that operates at an overall level of service E. By 2002, without the proposed supermarket, the intersection will deteriorate to a level of service F with maximum delays of 73.4+/- seconds during the Saturday peak hour for the westbound left and right turn movements. After construction of the supermarket the intersection will remain at level of service F with delays of 100.6 seconds for the westbound left and right turn movements. The applicant has proposed monitoring this intersection. Such monitoring will entail the preparation of a traffic study at the conclusion of the first year of operation, the second year of operation and the third year of operation of the supermarket to assess the need for a traffic signal at this location. If based on any of these studies NYSDOT authorizes the installation of a signal, the applicant will, at its sole cost and expense, cause it to be installed. If at the end of the third year of operation NYSDOT determines that no traffic signal will be permitted, the applicant shall be released of any further obligation to install a signal. Once a signal is installed at this intersection, it is expected to operate at a level of service B. It should be further noted that strict enforcement of the existing left hand turn prohibition at this intersection would significantly improve its level of service even without monitoring and subsequent signalization.

(e) Route 32/Jacqueline Street - This unsignalized intersection currently operates at a level of service E. Without the proposed project, this intersection will operate at a level of service F by 2002. With the proposed supermarket the intersection will continue to operate at a level of service F. The applicant has proposed monitoring this intersection. Such monitoring will entail the preparation of a traffic study at the conclusion of the first year of operation, the second year of operation and the third year of operation of the supermarket to assess the need for a traffic signal at this location. If based on any of these studies NYSDOT authorized the installation of a signal, the applicant will, at its sole cost and expense, cause it to be installed. If at the end of the third year of operation NYSDOT determines that no traffic signal will be permitted, the applicant shall be released of any further obligation to install a signal. Once a signal is installed at this intersection, it is expected to operate at a level of service B.

(f) **Primary Driveway Access** - The applicant will construct a signalized intersection at Route 32 that will serve as the main access drive. This will eliminate the two existing Friendly's Restaurant driveways. As part of this improvement, the applicant is also constructing left turn lanes on Route 32 and a new road across the street. The new road will enable future businesses at that location to utilize the signalized intersection for ingress/egress. The new road also provides an opportunity for the existing McDonalds to direct customers through that intersection at such time as appropriate access arrangements with the current property owner are made. Upon completion of these improvements, the intersection will operate at a level of service B/C.

(g) **Secondary Driveway Access** - The secondary access driveway will be located at Route 94 and will encompass the full service access drive at Monro Muffler. The applicant will widen and improve this access drive so that it is suitable to serve both Monro and the proposed supermarket. The NYSDOT has indicated that left turn exiting movements that are presently allowed will be prohibited at this location. The NYSDOT has recommended that left turns into the driveway be permitted but it will continue to monitor that movement. With these improvements and the left turn prohibition, this driveway access will operate at a level of service A/B. In the event NYSDOT determines in the future that left turns into the driveway should be prohibited, the traffic analyses indicate that such prohibition will not adversely impact operating conditions at surrounding intersections and particularly the Five Corners intersection.

***The Board hereby finds that, with the implementation of the improvements identified above, the impacts of the proposed project on surrounding roadways will be mitigated to the maximum extent practicable. In making this finding the Board notes the following:***

- With implementation of the improvements at Five Corners, the intersection will operate better than it does currently although it will still operate at a level of service F. NYSDOT has stated that there are no reasonable further improvements that can be undertaken to improve the level of service at this intersection.
- Improvements have been identified which offset impacts to unsignalized intersections although installation of these improvements will ultimately be evaluated by NYSDOT based on their functionality within and benefit to the overall highway network. Level of Service at Route 300 and Old Temple Hill Road will be significantly improved with greater enforcement of the left turn prohibitions from Old Temple Hill Road onto Route 300.
- The project's access driveways will operate adequately. NYSDOT will continue to monitor the left turn movement into the secondary access drive from Route 94.
- Access improvements will result in beneficial impacts in the Route 32 corridor. Three unsignalized full access driveways will be eliminated along Route 32 and a

fourth will have left turning movements restricted. The elimination and restriction of these intersections will significantly decrease the merging, diverging and crossing conflicts in this area.

***The Board further finds that in order to ensure the efficacy of the improvements and their timely implementation the following shall be imposed as conditions of approval:***

- No building permit shall be issued until a Highway Work Permit is issued by the NYSDOT. All conditions of the Highway Work Permit shall constitute conditions of site plan approval. In its Highway Work Permit application to NYSDOT, the applicant shall include a sign plan alerting drivers of the new traffic pattern at the Five Corners intersection.
- No certificate of occupancy shall be issued until the following traffic mitigation measures are completely installed: modified lane arrangement and signal phasing adjustments at the Five Corners intersection; closure of all abandoned curb cuts; signalization of the main access driveway along with construction of left turn lanes on Route 32; new road alignment on Long John Silver's parcel; secondary access driveway with left turn out prohibition; signalization at Route 94 and Old Temple Hill Road if authorized by NYSDOT and coordinated phasing of all new and existing study area signals as required by the NYSDOT.
- Traffic monitoring shall be conducted at the conclusion of the applicant's first year operation, its second year of operation and its third year of operation of the supermarket at the following intersections: Route 94 and Old Temple Hill Road (if no signal is already installed); Route 300 and Old Temple Road and Route 32 and Jacqueline Street. In the event monitoring at any of these intersections discloses the need for a traffic signal during the three-year monitoring period, the applicant shall, at its sole cost and expense, cause such signal to be installed provided NYSDOT authorizes its installation. If at the end of the three-year monitoring period, NYSDOT determines that no traffic signal will be permitted, the applicant shall be released of any further obligation to install a signal. The applicant's obligation to conduct traffic monitoring shall be bonded prior to its receipt of a building permit for the project.
- To ensure that there is no emergency equipment related impediment on surrounding roadways, all signal improvements installed by the applicant shall contain signal override equipment with equipment on existing signals. All emergency signal override equipment on study area signals (new and existing) shall be tested to ensure that all equipment is in proper working order prior to the issuance of a certificate of occupancy to. In the event testing indicates the need for repairs or further equipment installation on study/area signals, Hannaford shall undertake such repairs and/or installation.

- If feasible, a northbound right turn lane shall be provided at the main access drive. Insufficient right of way and/or the proximity of Central Hudson Gas and Electric's high-pressure gas main may render this infeasible.
- Prior to issuance of a building permit the applicant shall post a bond with the NYSDOT for all required off-site highway improvements.
- In the event the Town undertakes future local highway improvements at the Five Corners intersection, the applicant agrees to pay its fair share to help fund those improvements provided the Town enacts a legal mechanism requiring other commercial traffic generators to also pay their fair share.
- In the event that a future a service road is constructed at the intersection of Old Temple Hill Road and Route 94 extending through the lands n/f Greer and others to the applicant's site, the applicant will cooperate with all affected parties and the Town to connect its site to the service road for purposes of establishing an alternative means of secondary access. Such cooperation will include but not necessarily be limited to establishment of a reciprocal access easement agreement among the affected parties.
- In addition to standard signal improvements, a queue detector shall be installed in the Route 32 southbound left turn lane provided its installation is authorized by NYSDOT.

Finally, in rendering these findings, the Board recognizes that the proposed project primarily impacts NYS highways and NYSDOT is the agency principally responsible for authorizing improvements to these roadways. NYSDOT will render its own SEQR findings as to the impacts of the project on State roads and will impose whatever additional conditions it sees fit as part of its Highway Work permit process. As already stated, the approval to be granted by this Board will recognize the important and predominant role of NYSDOT by expressly conditioning such approval on NYSDOT's issuance of a Highway Work Permit.

### **Alternatives**

The Board has considered three alternatives to the proposed action. These are (1) No Action (2) Alternative Sites (3) Alternative Uses.

The No Action Alternative is represented by existing conditions on the site. Under this alternative the site would remain underutilized and partially developed. It would not meet the development objectives of the property owner or the applicant. It would however, continue to provide natural visual and noise buffer to the adjoining residential neighborhood. The design for the proposed project will replace visual buffer with appropriate grading, fencing and landscaping. Noise impacts will be mitigated through the incorporation of substantial noise reducing measures. Thus, there will be no significant loss of existing environmental benefits by pursuing the proposed action. Moreover, the proposed action will provide greater benefits to the

Town-through improvement of local roadways and increased ratables. On balance, the Board finds the proposed action more beneficial than the No Action alternative.

Three Alternative Sites were examined. Site #1 is the site of a proposed shopping center located at the southwest quadrant of the intersection of Union Avenue and Route 32. Site #2 is an existing retail center across from Big V Plaza between Route 32 and Route 94. Site #3 is a site located between Temple Hill Road and Old Temple Road currently occupied by existing businesses. None of these sites meet the applicant's business objectives and all provide significant constraints to development. Site #1 falls outside the requisite trade area necessary to generate sufficient business to ensure viability of the supermarket. Site #2 would require a zone change to permit the supermarket and has significant environmental constraints including a stream running through it. Further, there is significant existing development on this site that would have to be relocated at great expense and inconvenience of the current business owners. Site #3 is physically too narrow to properly locate a supermarket also requires relocation of existing businesses. In sum, where suitable vacant property exists, it is outside the trade area of the supermarket or, if in the trade area, is already extensively developed with active businesses which would be difficult and costly to relocate. The Board therefore finds that there are no alternative sites which meet the applicant's objective.

The zoning code contains a variety of uses permitted by right and special permit in the C zoning district. However, alternative uses of the site must be considered in light of the applicant's ability and desire to pursue those uses. This applicant is not a developer seeking to create approved space for potential retail tenants. This applicant is strictly in the business of building and operating supermarkets. The applicant does not have the experience or business objective to pursue other permitted uses such as personal service establishments, office buildings, mini-warehouses, new and used car sales establishments, hotels/motels, dry cleaning establishments, gasoline stations, printing plants, manufacturing facilities, wholesale sales and storage, lumber yards and related building material sales establishments or senior citizen housing. Moreover, many, if not all of these uses would result in equal or greater environmental impacts to the surrounding community than the proposed use. For these reasons, the Board finds that it would be unreasonable to expect the applicant to pursue any use of this property other than its use as a supermarket.

**D. Certification of Findings to Approve**

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions and specific findings relied upon to meet the requirements of 6NYCRR 617. This Statement of Findings Certifies that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement, and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Dated : April 25, 2002

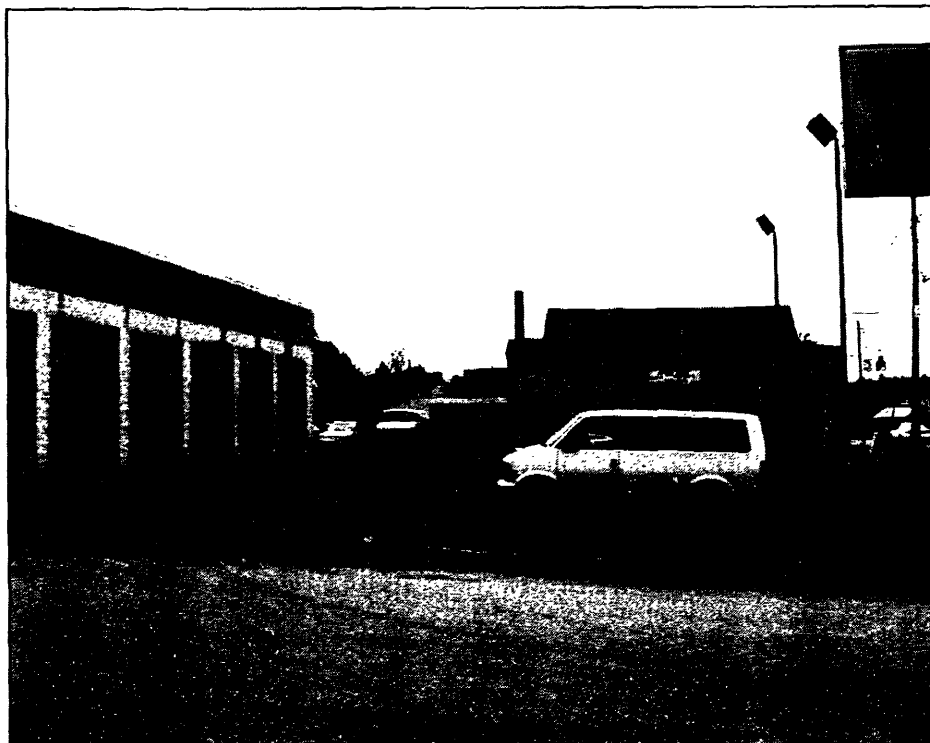
*NI age*

Town of New Windsor Planning Board  
555 Union Avenue  
New Windsor, New York 12553

By: \_\_\_\_\_  
Hon. James Petro, Chairman



**Photo 1:** Front View Looking South



**Photo 2:** Front - Looking West





**Photo 3: Front - Looking East**



**Photo 4: East Side - Looking North**



**Photo 5:** East Side - Looking South



**Photo 6:** East Side - Looking South

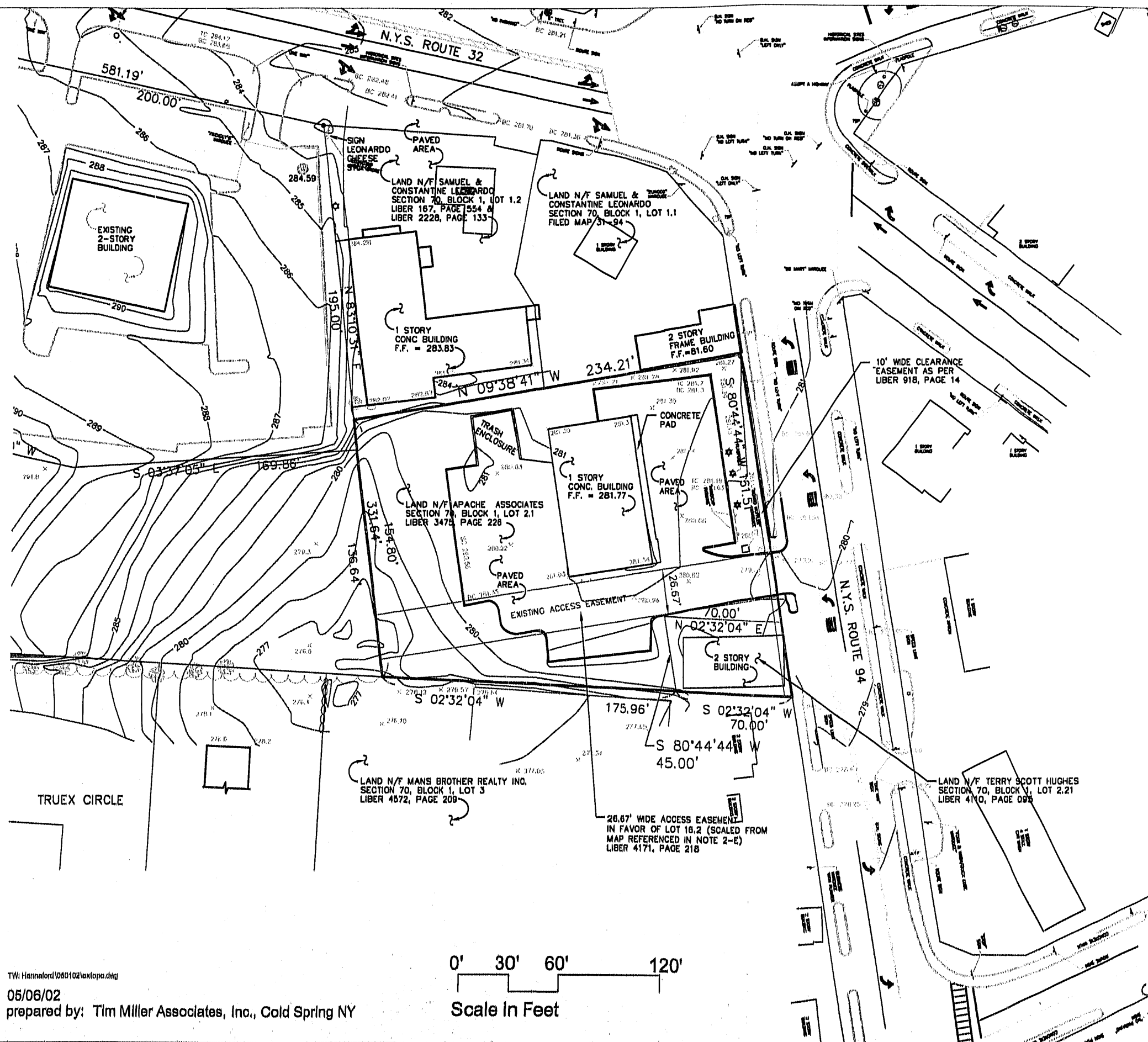


**Photo 7:** Rear - Looking Southwest



**Photo 8:** Rear - Looking Southwest



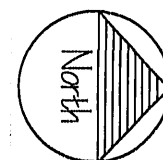


## NOTES:

1. Refer to Figure 1: Property Lines & Easements, and Figure 3: Illustrative Amended Site Plan for additional information.

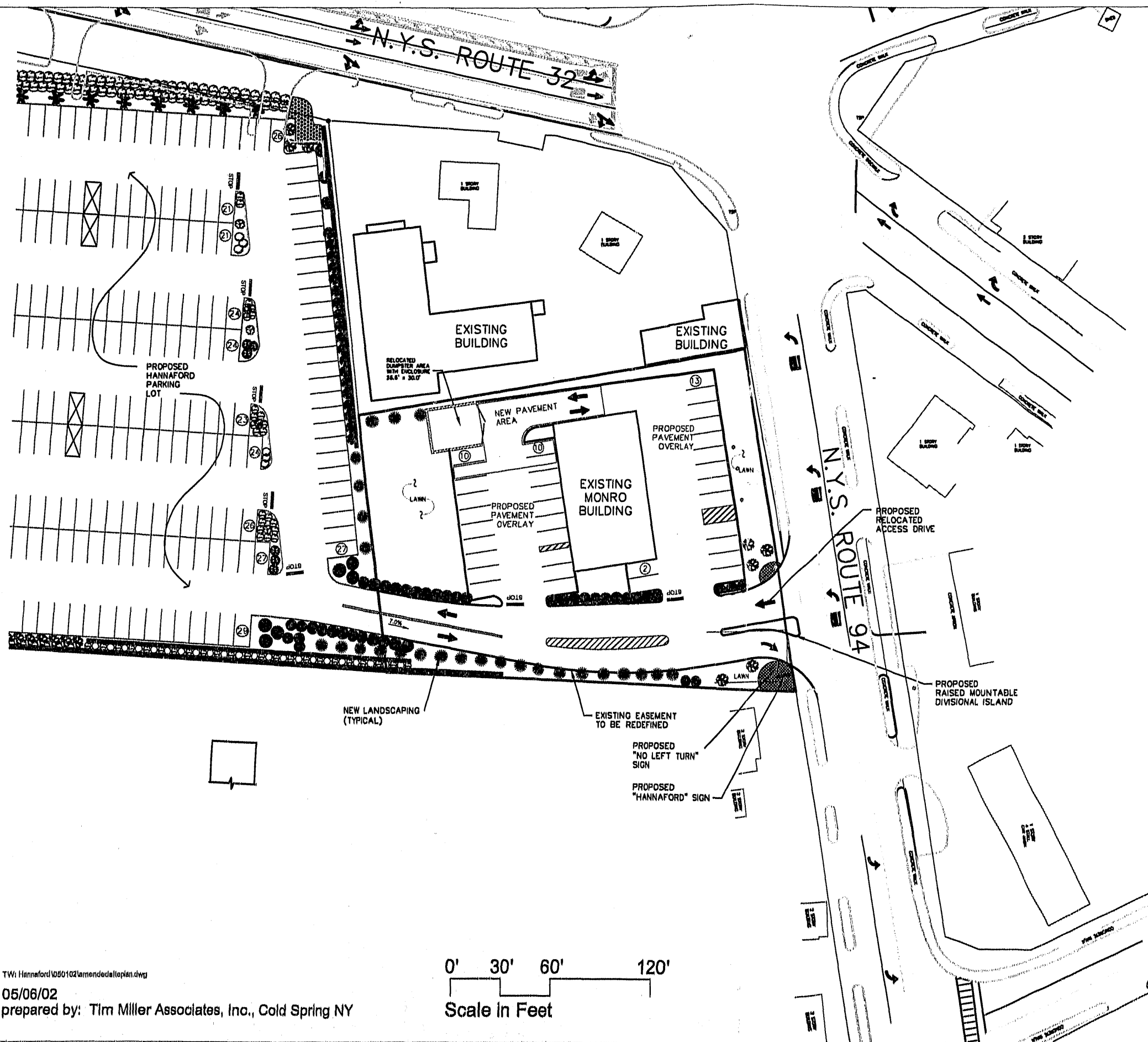
2. Source: Tectonic Engineering and Surveying Consultants, PC.

3. This figure is prepared for illustrative purposes only. For complete site information, refer to Boundary/Topographic Survey, Drawing C-100, prepared for Hannaford Food & Drug by Tectonic Engineering and Surveying Consultants, PC, Town of New Windsor Building Department, Hannaford Site Plan Application Number PS2000-1021 and the related Amended Site Plan Application for Mono Muffler Brake Inc.



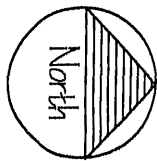
Scale 1" = 60'

Figure 2  
EXISTING TOPOGRAPHIC FEATURES  
MONRO MUFFLER BRAKE INC.  
Route 94  
New Windsor, Orange County, New York

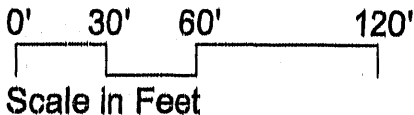


# NOTES:

1. Refer to Figures 1: Property Lines & Easements, and Figure 2: Existing Topographic Features for additional information.
2. Source: Tectonic Engineering and Surveying Consultants, PC.
3. This figure is prepared for illustrative purposes only. For complete site plan information, refer to Amended Site Plan, Drawing C-102A, prepared for Hannaford Food & Drug by Tectonic Engineering and Surveying Consultants, PC, Town of New Windsor Building Department, Hannaford Site Plan Application Number PS2000-1021 and the related Amended Site Plan Application for Monro Muffler Brake Inc.



Scale 1" = 60'



TW: Hannaford V080102/amended site plan.dwg  
05/06/02  
prepared by: Tim Miller Associates, Inc., Cold Spring NY

Figure 3  
Illustrative Amended Site Plan  
MONRO MUFFLER BRAKE INC.  
Route 94  
New Windsor, Orange County, New York

**TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS**

**APPLICATION FOR VARIANCE**

# \_\_\_\_\_  
Date: \_\_\_\_\_

**I. Applicant Information:**

- (a) Martin's Food of South Burlington Inc., (see attached Proxy Affidavit)  
(Name, address and phone of Applicant) (Owner)
- (b) \_\_\_\_\_  
(Name, address and phone of purchaser or lessee)
- (c) Jacobowitz & Gubits, LLP, Larry Wolinsky, Esq. 158 Orange Ave, Walden, NY 12586 778-2121  
(Name, address and phone of attorney)
- (d) Tectonic Engineering Consultants, 70 Pleasantville Rd., Mountainville, NY 10963 #534-5959  
(Name, address and phone of contractor/engineer/architect/surveyor)

**II. Application type:**

- ( ) Use Variance ( ) Sign Variance  
(X) Area Variance (X) Interpretation

**III. Property Information:**

- (a) C New York State Route 94 (Monro Muffler) 70-1-2.1 39,844  
(Zone) (Address of Property in Question) (S-B-L) (Lot size)
- (b) What other zones lie within 500 feet? R-4
- (c) Is pending sale or lease subject to ZBA approval of this Application? No
- (d) When was property purchased by present owner? 7/91
- (e) Has property been subdivided previously? No
- (f) Has property been subject of variance previously? Yes. If so, when 3/22/93
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning/Fire Inspector? No
- (h) Is there any outside storage at the property now or is any proposed? No

**IV. Use Variance.**

- (a) Use Variance requested from New Windsor Zoning Local Law,  
Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.

(Describe proposal) (See attached narrative)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) The legal standard for a "Use" Variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Area Variance:

(a) Use Variance requested from New Windsor Zoning Local Law,  
Section 48-9, Table of Use/Bulk Regulations \_\_\_\_\_ Regs., Col. C.

	Permitted	Proposed or Available	Variance Request
Min. Lot Area	<u>40,000 sq. ft., 39,844* sq. ft.</u>	<u>26,992 sq. ft.</u>	<u>12,892 sq. ft., 13,008 sq. ft.</u>
Min. Lot Width	_____	_____	_____

Reqd. Front Yd. \_\_\_\_\_

Reqd. Side Yd. \_\_\_\_\_

Reqd. Rear Yd. \_\_\_\_\_

Reqd. Street \_\_\_\_\_

Frontage\* \_\_\_\_\_

Max. Bldg. Hgt. \_\_\_\_\_

Min. Floor Area\* \_\_\_\_\_

Dev. Coverage\* \_\_\_\_\_

Floor Area Ratio\*\* \_\_\_\_\_

Parking Area \_\_\_\_\_

✱ Prior variance

\* Residential Districts only

\*\* Non-residential Districts only

(b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3) whether the requested variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and (5) whether the alleged difficulty was self-created. Describe why you believe the ZBA should grant your application for an area variance:

See attached narrative  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VI. Sign Variance:

(a) Variance requested from New Windsor Zoning Local Law,

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign # 1	_____	_____	_____
Sign # 2	_____	_____	_____
Sign # 3	_____	_____	_____
Sign # 4	_____	_____	_____



- (b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or oversized signs.

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- (c) What is total area in square feet of all signs on premises including signs on windows, face of building and free-standing signs? \_\_\_\_\_.

**VII. Interpretation.**

- (a) Interpretation requested of New Windsor Zoning Local Law,  
Section 48-37.

- (b) Describe in detail the proposal before the Board:

See attached narrative

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**VIII. Additional comments:**

- (a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaped, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage).

See attached narrative

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**IX. Attachments required:**

- X Copy of referral from Bldg./Zoning Inspector or Planning Board.  
X Copy of tax map showing adjacent properties.  
X Copy of contract of sale, lease or franchise agreement. Copy of deed and title policy.  
X Copy of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.  
N/A Copy(ies) of sign(s) with dimensions and location.  
X Two (2) checks, one in the amount of \$\_\_\_\_\_ and the second check in the amount of \$\_\_\_\_\_, each payable to the TOWN OF NEW WINDSOR.  
X Photographs of existing premises from several angles.

**X. Affidavit.**

Date:

STATE OF NEW YORK )  
 )SS:  
COUNTY OF ORANGE )

The undersigned applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/her information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

~~Larry Wolinsky, Attorney for Applicant~~

Sworn to before me this  
13<sup>th</sup> day of May, 2002.

Louisa A McManis

Notary Public of the State of New York

TRICIA A McMORRIS  
Notary Public, State of New York  
No. 01MC6015437  
Qualified in Ulster County  
Commission Expires October 26, 20 02

## XI. ZBA Action:

(a) Public Hearing date: \_\_\_\_\_

**SUPPORTING NARRATIVE  
APPLICATION OF MARTIN'S FOOD OF SOUTH BURLINGTON, INC.  
TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS**

**I.     Introduction:**

The applicant, Martin's Food of South Burlington, Inc., seeks to construct a 55,200 square foot Hannaford Food & Drug supermarket with associated parking and utilities on a 5.443-acre site located at New York State Routes 32 and 94 (Tax Map - Sec. 70, Block 1, Lots 16.1 and 16.2). The application has been the subject of an exhaustive engineering and environmental review by the Town of New Windsor Planning Board. The Planning Board required preparation of an Environmental Impact Statement and ultimately determined that all project impacts will be mitigated to the maximum extent practicable. On April 24, 2002 the Planning Board adopted a Statement of Findings under SEQRA and indicted its intent to approve the project.

An action related to the proposed project is amendment of the Monro Muffler site plan. (Tax Map-Sec. 70, Block 1, Lot 2.1). The site plan amendment will facilitate installation of a secondary access from Route 94 through an easement on the Monro Muffler site to service the supermarket. The site plan amendment consists of reconfiguring an existing access easement over the Monroe site to accommodate widening of the existing access drive, relocation of its existing enclosed dumpster and relocation of several parking spots.

Existing and proposed conditions relating to this action are illustrated in attached Figure 1: Existing Topographic Features, Figure 2: Property Lines & Easements, and Figure 3: Illustrative Amended Site Plan.

**II.    Reason for the Interpretation/Variance:**

The New Windsor Planning Board, in consultation with the Building Inspector, has interpreted the definition of "lot area," in Section 48-37 of the Zoning Code, to require subtraction of the proposed access easement area through Monro Muffler (i.e., 12,892 square feet) from the current permitted lot area (i.e., 39,884 square feet). Therefore, a determination was made that a variance will be required<sup>1</sup>. The Planning Board has recommended that the ZBA grant the variance.

It is the applicant's opinion that the proper interpretation of Section 48-37 does not require the access easement to be subtracted from the existing lot area and that no variance

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<sup>1</sup>On or about September, 1993, Monro Muffler received a variance from the required minimum lot area in the C Zoning District (i.e., 40,000 square feet) to construct an automobile repair garage on a 39,884 square foot lot. In 1995, the owner of the Monro parcel placed an easement over it to provide a means of access to the adjoining parcel to the rear.

is required. However, in the event it is determined that a variance is required, the applicant believes it is entitled to such variance under applicable legal requirements.

### III. Interpretation:

Section 48-37 of the Town of New Windsor Zoning Code defines "Lot "Area" as

The total horizontal area included within the property line of a lot, but specifically excluding areas of the lot covered by easements, rights-of-way encumbrances **or otherwise precluded from development**, areas of the lot under water ... and areas of the lot identified as freshwater wetlands by the New York State Department of Environmental Conservation. (Emphasis Added)

It is clear from this definition that its purpose is to prohibit land area being included in the minimum lot area calculation where the land area is **precluded from development**. In this instance however, the Monro access easement is **not** precluded from development. The access easement will not be left in its current, state. The easement will be improved and developed as a commercial driveway serving both Monro and Hannaford. Under any common definition, this constitutes development. Would anyone seriously conclude that development of a paved driveway and parking area serving retail facilities does not constitute development?

To interpret the definition of lot area in any other manner creates an irrational result. There are many situations where commercial centers have mutual agreements for shared access of tenants. Many of those agreements not only cover driveways but also parking areas. The same is true for residential condominium developments. To conclude that the existence of those joint access agreements create situations that require deduction of lot area would render most if not all centers and condominium developments non-conforming and substandard. Conversely, interpreting the deduction of lot area where an easement or encumbrance truly prohibits development is more reasonable since that area is effectively carved out of the lot.

### IV. Variance:

The Monro Muffler site is located in the C-Design Shopping Zoning District. The minimum lot area requirement in the District is 40,000 square feet. In 1993, the Monro site received a minimum lot area variance in the amount of 116 square feet thereby permitting development on a lot size of 39,884 square feet. Should the ZBA interpret the Code to require an area variance, a additional minimum lot area variance of 12,892 square feet is requested by this application. The 12,982 square feet comprise the access easement over the Monro Muffler site.

### Application of Legal Standards:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Monro Muffler is located within a commercially developed neighborhood. No change to the commercial character of the neighborhood will occur as a result of the shared access driveway. The use of the driveway is consistent with the numerous commercial driveways in this area.

2. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.

The applicant's proposed development requires a second means of access to ensure safe and proper internal traffic circulation and distribution of traffic onto surrounding roadways. Given the configuration of the project site and lack of available vacant land adjoining the site, the applicant has no other means for secondary access than what is proposed. The variance therefore, cannot be avoided.

3. Whether the requested area variance is substantial.

The requested area variance is substantial in volume but not in substance. Granting of the variance will in no way alter the proper functioning of the Monro Muffler site. There will be no reduction in parking spaces or other necessary site design elements. Internal traffic circulation will be improved as vehicular access around all building sides will now be available. From a functional standpoint, the site will operate the same or better with the variance.

4. Whether the proposed variance will have an adverse effect on the physical or environmental conditions in the neighborhood or district.

The Hannaford project has been the subject of an Environmental Impact Statement and full review under NY SEQRA. Potential adverse impacts from the overall project were identified and analyzed in the impact statement. Mitigation measures have been imposed to

minimize impacts to the maximum extent practicable. Traffic control mitigation measures, including controls at this access driveway, have been designed and conceptually approved by NYSDOT. Potential impacts to the adjoining residential neighborhood to the east are proposed to be mitigated through the installation of screen fencing, landscape buffers and noise controls. The Statement of Findings adopted by the Planning Board for the project (which includes the Monro Muffler site plan amendment) is attached hereto and incorporated herein.

5. Whether the alleged difficulty was self created.

The applicant has done nothing to create the need for the requested variance. If there is a need for the variance, the need was created by the property owner when it placed the access easement on the property in 1995. As a matter of law, self created hardship does not bar issuance of an area variance but may be considered as one of many factors in the ZBA's decision.

Conclusion:

As indicated above and by the exhaustive environmental review conducted by the Planning Board, granting of the variance will have virtually no detriment to the health, safety and welfare of the neighborhood or community. In contrast, the granting of the variance will provide great benefit to the applicant and its customers by establishing a secondary means of access for the site to permit safe and efficient vehicular circulation and operating conditions.

**PROXY AFFIDAVIT****APPLICATION FOR VARIANCE # 02-32****ZONING BOARD OF APPEALS****TOWN OF NEW WINDSOR****STATE OF NEW YORK )****) ss.:****COUNTY OF ORANGE )**HOUSE OF ARACHE, LTD., deposes and says:

I am the OWNER of a certain parcel of land within the TOWN OF  
NEW WINDSOR designated as tax map

SECTION 70 BLOCK 1 LOT 2.1 I HEREBY AUTHORIZE

MARTIN'S FOODS of SOUTH BURLINGTON, INC.

(company name) to make an application before the ZONING BOARD  
OF APPEALS as described in the within application.

Dated: 5-2-02

HOUSE OF ARACHE, LTD.

BY: Herbert Shym PARTNER  
(Signature of Owner)

Sworn to before me this  
Y day of MAY, 2002.

Joe Ram  
Notary Public

JACQUE BARON  
Notary Public, State of New York  
No. 0184080374  
Qualified in Nassau County  
Commission Expires April 22, 03

**OFFICE OF THE PLANNING BOARD - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NY**

**NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION**

PLANNING BOARD FILE NUMBER: **00-15** DATE: **05-03-2002**

**00-22**  
APPLICANT: **HOUSE OF APACHE, LTD (MONROE MUFFLER)**

**104 SOUTH CENTRAL AVE (SUITE 20)**

**VALLEY STREAM, NY**

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED **11-13-2001**  
FOR (SUBDIVISION/SITE PLAN) **SITE PLAN**  
LOCATED AT **RT. 94 - VAILS GATE (PORTION OF HANNAFORD FOOD PROJECT)**  
DESCRIPTION OF EXISTING SITE: SEC: **70** BLOCK: **1** LOT: **21**

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

**LOT AREA VARIANCE**

*Michael B. Cock*  
MICHAEL B. COCK, BUILDING ENGR.

**REQUIREMENTS**

ZONE <b>C</b> USE <b>B-5</b>	REQ'D	PROPOSED OR AVAILABLE	VARIANCE REQUEST	
MIN. LOT AREA	<b>40 000</b>	<b>26 392</b>	<b>13008</b>	<b>*</b>
MIN. LOT WIDTH	<b>200</b>	<b>192 **</b>	<b>**</b>	
REQ'D FRONT YARD	<b>60</b>	<b>71</b>	<b>—</b>	
REQ'D SIDE YARD	<b>30</b>	<b>25 **</b>	<b>**</b>	
REQ'D TOTAL SIDE YARD	<b>70</b>	<b>89</b>	<b>—</b>	
REQ'D REAR YARD	<b>30</b>	<b>115</b>	<b>—</b>	
REQ'D FRONTAGE	<b>N/A</b>	<b>—</b>	<b>—</b>	
MAX. BLDG. HT.	<b>12' FT.</b>	<b>20</b>	<b>**</b>	
FLOOR AREA RATIO	<b>0.5</b>	<b>0.11</b>	<b>—</b>	
MIN. LIVABLE AREA	<b>—</b>	<b>—</b>	<b>—</b>	
DEV. COVERAGE	<b>—</b>	<b>—</b>	<b>—</b>	
O/S PARKING SPACES	<b>32</b>	<b>35</b>	<b>—</b>	

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT:  
(914-563-4630) TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF  
APPEALS.

**\*\* Previous Variance obtained 3-22-93**

**& Previous Variance for 39848 SF lot granted 3-22-93**

CC: Z.B.A., APPLICANT, P.E. ENGINEER, P.A. FILE



Parcel IV

No Consideration

THIS INDENTURE, made the 27 day of July, nineteen hundred and twenty two  
 BETWEEN APACHE ASSOCIATES, a partnership,  
 with its principal office at 52 Elm Street, Huntington, New York  
 11743;

party of the first part, and HOUSE OF APACHE PROPERTIES, LTD, a domestic  
 corporation, with its principal office at 52 Elm Street,  
 Huntington, New York 11743;

party of the second part.

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration  
 paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs  
 or successors and assigns of the party of the second part forever.

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,  
 lying and being in the Town of New Windsor, County of Orange, and State of  
 New York and bounded and described as follows:

SECT. 70  
 BLK. 1  
 LOT 2.1

BEGINNING at an iron bar on the Southerly side of New York State  
 Highway Route 94, leading from Route 32 to Newburgh, said point  
 of beginning being the Northwesterly corner of lands of Samuel  
 and Constantine Leonardo, Liber 167, Page 554 and Liber 2228  
 Page 133, and running:

- CONTAINING: 0.916 Acres  
 All bearings are referred  
 North as February 1977.
1. Thence from said point of beginning along the Southerly  
 side of New York State Highway Route 94, North 80° 44'  
 44" East, 161.51 feet to a railroad spike;
  2. Thence along the Westerly line of lands of New Windsor  
 Volunteer Ambulance Corps, Inc., Liber 2181, Page 334,  
 South 2° 32' 04" West, 70.00 feet to an iron bar;
  3. Thence along the Southerly line of lands of New Windsor  
 Volunteer Ambulance Corps, Inc., North 80° 44' 44" East,  
 45.00 feet to an iron bar;
  4. Thence along the Westerly line of lands of C. F. Mans,  
 Liber 2273, Page 73, South 2° 32' 04" West, 175.96 feet  
 to a recovered iron pipe at a stone wall corner;
  5. Thence along the Northerly line of lands of Sanste  
 Properties, Inc., Fred Gardner and Herbert Sloppy,  
 D/B/A Apache Associates, South 83° 10' 34" West,  
 154.80 feet to an iron bar;
  6. Thence along the Easterly line of lands of Leonardo, North  
 9° 38' 41" West, 234.21 feet to the place of beginning.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and  
 roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances  
 and all the estate and rights of the party of the first part in and to said premises: TO HAVE AND TO  
 HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of  
 the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything  
 whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of  
 the first part will receive no consideration for this conveyance and will hold the right to receive such consid-  
 eration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply  
 the same first to the payment of the cost of the improvement before using any part of the total of the same for  
 any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above  
 written.

IN PRESENCE OF:

*Amey Porter*

APACHE ASSOCIATES

*Fred Gardner*  
 FRED GARDNER

183 3475 226

3475-225

STATE OF NEW YORK, COUNTY OF SUFFOLK ss:  
On the 22nd day of July 1991, before me  
personally came FRED GARDNER

to me known to be the individual described in and who  
executed the foregoing instrument, and acknowledged that  
he executed the same.

*Regina Bordone*  
REGINA BORDONE  
Notary Public, State of New York  
No. 141463 - Suffolk County  
Commission Expires 12-31-96

STATE OF NEW YORK, COUNTY OF ss:  
On the day of 19, before me  
personally came

to me known to be the individual described in and who  
executed the foregoing instrument, and acknowledged that  
he executed the same.

STATE OF NEW YORK, COUNTY OF ss:  
(In the day of 19, before me  
personally came  
to me known, who, being by me duly sworn, did depose and  
say that he resides at No.

that he is the  
of

the corporation described  
in and which executed the foregoing instrument; that he  
knows the seal of said corporation; that the seal affixed  
to said instrument is such corporate seal; that it was so  
affixed by order of the board of directors of said corpora-  
tion and that he signed his name thereto by his order.

STATE OF NEW YORK, COUNTY OF ss:  
On the day of 19, before me  
personally came  
the subscribing witness to the foregoing instrument, with  
whom I am personally acquainted, who, being by me duly  
sworn, did depose and say that he resides at No.

that he knows

to be the individual  
described in and who executed the foregoing instrument;  
that he, said subscribing witness, was present and saw  
execute the same; and that he, said witness,  
at the same time subscribed his name as witness thereto.

**Bargain and Sale Deed**  
WITH COVENANT AGAINST GRANTOR'S ACTS

TITLE NO.

APACHE ASSOCIATES

TO

HOUSE OF APACHE PROPERTIES, LTD

SECTION

BLOCK

LOT

COUNTY OR TOWN

Prepared at Request of  
CHICAGO TITLE INSURANCE COMPANY

Return by Mail to

STANDARD FORM OF NEW YORK DEED BY TITLE UNDERWRITER

Distributed by

**CHICAGO TITLE  
INSURANCE COMPANY**

FRED GARDNER, ESQ.  
52 Elm Street  
Huntington, NY 11743

By No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

LIBR 3475 PAGE 227

PROJECT ID NUMBER

617.20

SEQR

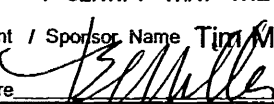
APPENDIX C

STATE ENVIRONMENTAL QUALITY REVIEW

**SHORT ENVIRONMENTAL ASSESSMENT FORM**

for UNLISTED ACTIONS Only

**PART 1 - PROJECT INFORMATION** (To be completed by Applicant or Project Sponsor)

1. APPLICANT / SPONSOR Martin's Foods of South Burlington, Inc.	2. PROJECT NAME Area Variance for Monro Muffler Brake Site
3. PROJECT LOCATION: New Windsor Municipality	Orange County
4. PRECISE LOCATION: Street Address and Road Intersections, Prominent landmarks etc - or provide map New York State Route 94, Town of New Windsor, Orange County, New York	
5. IS PROPOSED ACTION: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification / alteration	
6. DESCRIBE PROJECT BRIEFLY: A lot area variance to allow proposed parking and site access improvements on a 39,884 sf site now occupied by Monro Muffler Brake, Inc. (Section 48-37 of the Zoning Code requires subtraction of the access easement through Monro Muffler (12,892 sf) from the current permitted lot area (39,884 sf).) A ZBA determination is needed as to whether a variance will be required.	
7. AMOUNT OF LAND AFFECTED: Initially 0.916 acres Ultimately 0.916 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If no, describe briefly: Section 48-37 of the Zoning Code requires subtraction of the access easement through Monro Muffler (12,892 sf) from the current permitted lot area (39,884 sf). A determination is needed as to whether a variance will be required.	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? (Choose as many as apply.) <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park / Forest / Open Space <input type="checkbox"/> Other (describe)	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (Federal, State or Local) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency name and permit / approval:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit / approval: Site Plan Approval, Town Planning Board, Area Variance, Town Zoning Board	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT / APPROVAL REQUIRE MODIFICATION? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant / Sponsor Name Tim Miller Associates, Inc. on behalf of Martin's Foods Date: May 10, 2002 Signature 	

If the action is a Coastal Area, and you are a state agency,  
complete the Coastal Assessment Form before proceeding with this assessment

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

<b>A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, coordinate the review process and use the FULL EAF.
<b>B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6?</b> If No, a negative declaration may be superseded by another involved agency. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING:</b> (Answers may be handwritten, if legible)	
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">No change.</div>	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">No change.</div>	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">No change.</div>	
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">No change.</div>	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">No change.</div>	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">None identified.</div>	
C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly: <div style="border: 1px solid black; padding: 2px; min-height: 20px;">None identified.</div>	
<b>D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?</b> (If yes, explain briefly: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <div style="border: 1px solid black; padding: 2px; min-height: 20px;"></div>	
<b>E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?</b> If yes explain: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <div style="border: 1px solid black; padding: 2px; min-height: 20px;"></div>	

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question d of part ii was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

<input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which <b>MAY</b> occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action <b>WILL</b> not result in any significant adverse environmental impacts <b>AND</b> provide, on attachments as necessary, the reasons supporting this determination.	
<b>Town of New Windsor Zoning Board of Appeals</b>	
_____ Name of Lead Agency	_____ Date
_____ Print or Type Name of Responsible Officer in Lead Agency	_____ Title of Responsible Officer
_____ Signature of Responsible Officer in Lead Agency	_____ Signature of Preparer (If different from responsible officer)



# Town of New Windsor

555 Union Avenue  
New Windsor, New York 12553  
Telephone: (845) 563-4631  
Fax: (845) 563-4693

## Assessors Office

May 13<sup>th</sup>, 2002

House of Apache Properties, LTD.  
104 South Central Avenue  
Valley Stream, NY 11580

Dear Madam/Sirs:

According to our records, the attached list of property owners are within five hundred (500) of the above referenced property.

The charge for this service is \$65.00, minus your deposit of \$25.00.

Please remit the balance of \$40.00 to the Town Clerk's Office.

Sincerely,

Leslie Cook  
Sole Assessor

LC/srr  
Attachments

**CC: Pat Corsetti, ZBA**

65-2-20 ✓  
Norstar Bank of Upstate N.Y. ✓  
C/o CBRF # 27522 Box 231476  
Hartford, CT 06123

65-2-21 ; 65-2-22 ✓  
Mans Brothers Realty Inc.  
P.O. Box 247  
Vails Gate, NY 12584

65-2-23 ✓  
Joan A. Shedden ✓  
27 Water Way  
Newburgh, NY 12550

69-1-6 ✓  
V.G.R. Associates, LLC ✓  
C/o Irving S. Bobrow, Mgr.  
40 East 69<sup>th</sup> Street  
New York, NY 10021

69-1-9.1 ✓  
Theodore & Konstaninos Panagiotopoulos ✓  
65 Eisenhower Drive  
Middletown, NY 10940

69-1-11 ✓  
June & Leon Trudeau ✓  
94 Canterbury Road  
Fort Montgomery, NY 10928

69-2-6 ✓  
R & S Foods Inc. ✓  
249 North Craig Street  
Pittsburgh, PA 15213

69-2-7 ✓  
NYS Dept. of Transportation ✓  
Office of State Comptroller  
Legal Services 6<sup>th</sup> Floor  
A.E. Smith Building  
Albany, NY 12236

69-2-8 ✓  
John Grana ✓  
112 Enoch Crosby Road  
Brewster, NY 10509

69-2-9 ✓  
Primavera Properties Inc. ✓  
P.O. Box 177  
Vails Gate, NY 12584

69-2-10 ✓  
Angelo Rosmarino Enterprises, Inc. ✓  
P.O. Box 392  
Vails Gate, NY 12584

69-2-11 ✓  
Amerada Hess Corp ✓  
C/o Dean E. Cole, Mgr.  
Property Tax Dept.  
1 Hess Plaza  
Woodbridge, New Jersey 07095

69-2-12.1 ✓  
MCB Partnership ✓  
521 Green Ridge Street  
Scranton, PA 18509

69-3-2.1 ✓  
TGS Associates, Inc. ✓  
15 East Market Street  
Red Hook, NY 12571

69-3-5 ✓  
S & S Properties Inc. ✓  
123 Quaker Road  
Highland Mills, NY 10930

69-3-6 ✓  
DB Companies ✓  
DBA DB Mart Conv. Stores  
P.O. Box 9471  
Providence, RI 02940

69-4-26.11 ✓  
Franchise Realty Interstate Corp. ✓  
C/o Colley & McCoy Co.  
P.O. Box 779  
Croton Falls, NY 10519

69-4-26.12 ✓  
Fred Plus 3, LLC ✓  
104 South Central Ave Rm 20  
Valley Stream, NY 11580

69-4-26.13 ✓  
Herbert Slepoy & Fred Gardner ✓  
104 South Central Ave  
Valley Stream, NY 11580

69-4-26.2 ✓  
Mobil Oil Corporation ✓  
C/o Exxon Mobil Corporation  
Property Tax Division, P.O. Box 4973  
Houston, TX 77210-4973

70-1-1.1 70-1-1.2 ✓  
Samuel Leonardo L.E. ✓  
Constantine Leonardo  
7 Dogwood Hills  
Newburgh, NY 12550

70-1-2.21 ✓  
Darlene Hughes ✓  
P.O. Box 208  
Salisbury Mills, NY 12577

70-1-3 ✓  
Mans Brothers Realty Inc. ✓  
P.O. Box 247  
Vails Gate, NY 12584

70-1-4 ✓  
Gregory Greer ✓  
P.O. Box 212 , Shields Road  
Cornwall, NY 12518

70-1-5 ✓  
Mans CP ✓  
P.O. Box 247  
Vails Gate, NY 12584

70-1-6 ✓  
Route 94 Associates, LLC ✓  
2 Hearthstone Way  
New Windsor, NY 12553

70-1-7 ✓  
V.G. Maximus Inc. ✓  
C/o Joseph Pisani  
203 Cambridge Court  
New Windsor, NY 12553

70-1-13 ✓  
Larry Reynolds ✓  
4 Truex Drive  
New Windsor, NY 12553

70-1-14 ✓  
Deborah & Christopher Smith ✓  
6 Truex Drive  
New Windsor, NY 12553

70-1-15.1 ✓  
Jo Ann & Edward Lekis ✓  
P.O. Box 204  
Vails Gate, NY 12584

70-1-15.2 ✓  
John & Detra Denton  
10 Truex Circle  
New Windsor, NY 12553

70-2-3 ✓  
Benjamin Harris  
PO Box 780  
Cornwall, NY 12518

70-1-15.3 ✓  
Bettina Youngberg & Richard D'Aloia ✓  
12 Truex Circle  
New Windsor, NY 12553

70-2-10 ✓  
Byron Russell L.E. Virginia Russell ✓  
15 Truex Drive  
New Windsor, NY 12553

70-1-15.4 ✓  
Michael & Mary Fernandez ✓  
9 Truex Circle  
New Windsor, NY 12553

70-2-11 ✓  
Fred Saintmire ✓  
13 Truex Drive  
New Windsor, NY 12553

70-1-15.5 ✓  
Salvatore & Carolina Tosco ✓  
7 Truex Circle  
New Windsor, NY 12553

70-2-12 ✓  
Timothy Strobel ✓  
11 Truex Drive  
New Windsor, NY 12553

70-1-15.6 ✓  
Pete & Farida Caoli ✓  
18 Truex Drive  
New Windsor, NY 12553

70-1-15.7 ✓  
Miguel & Barbara Bencosme ✓  
16 Truex Drive  
New Windsor, NY 12553

70-1-15.8 ✓  
Donna Dooley ✓  
14 Truex Drive  
New Windsor, NY 12553

70-1-16.1 70-1-16.2 ✓  
4 Acres, L.L.C. ✓  
104 South Central Avenue  
Valley Stream, NY 11580

70-1-19 ✓  
Kimberly Jewell ✓  
20 Truex Drive  
New Windsor, NY 12553

70-2-1 ✓  
Clarence & Zenobia Reed ✓  
3 Truex Drive  
New Windsor, NY 12553

Date 5/29/02

# TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553

2250

TO Frances Roth DR.  
168 W. Drury Lane  
Newburgh, N.Y. 12550

DATE		CLAIMED	ALLOWED
<del>5/19/02</del>	Zoning Board Mtg	75 00	
	Misc. - 2		
	North Plank Development - 6		
	Colandrea - 3		
	Corbett - 1		
	Denhoff - 5		
	Salomottoff - 5		
	House of Apache - 5		
	Dreyer - 2		
	Smith - 4		
	Roberts - 3	184 50	
	Trapp - 3		
	Coplan - 2	259 50	

Lawrence W. Torley



HOUSE OF APACHE, LTD.

Larry Wolinsky, Esq. appeared before the board for this proposal.

MR. WOLINSKY: Good evening, Mr. Chairman, Larry Wolinsky here from Jacobowitz & Gubits. Let me give you some background. This is Tim Miller from Tim Miller Associates, he's the planner on the project. As some of you may already know, we have been at the planning board over a year for an extensive environmental review process which included the preparation of an environmental impact statement. We were at the point of site plan approval for the project when the planning board engineer advised the planning board that a shared easement, driveway easement, which is serving the secondary access for the project would require under the definition of lot area in your zoning ordinance a deduction from lot area and therefore, necessitating a lot area variance for the project in the amount of approximately 13,000 square feet. Basically, we read the definition of lot area differently and so what we have done is we established our application as a request for an interpretation or in the alternative, if you guys decide that we're wrong on that interpretation, we also believe we would be entitled under the legal standards for a lot area variance. Basically, this improves the existing design for Monro Muffler. What it entails basically is a modification of the existing access a little bit of a widening of it, some relocation of a couple parking spaces, there will actually be more parking spaces now than presently exist and now there will be a flow around the entire Monro Muffler building where that did not happen previously. The planning board recommended the variance to this board, that's in the minutes and we're hoping that we're in a position to have you folks proceed with a public hearing and I'm prepared to answer any questions you might have this evening.

MR. TORLEY: So you're asking for an interpretation and/or area variance?

MR. WOLINSKY: Correct.

MR. BABCOCK: Mr. Chairman, I think we should add one thing that I think they have their own property alongside of this entranceway, if that's not, if I'm correct in speaking and I think it's DOT's determination that that's where they want the entrance to Hannaford's. If that's not correct, am I speaking correctly when I say that?

MR. WOLINSKY: Well, DOT has reviewed this location and we're set at this location.

MR. BABCOCK: Right.

MR. TORLEY: So whoever owns the property immediately to the east of that two story existing building is going to come down?

MR. WOLINSKY: Yes.

MR. TORLEY: So the property immediately to the east is the same ownership as the rest of your property?

MR. MILLER: That's correct, that property is really part.

MR. BABCOCK: They don't want two entrances or two exits right next to each other.

MR. TORLEY: What's the other exit?

MR. BABCOCK: This is Monroe Muffler's present entrance.

MR. WOLINSKY: This one right here or where?

MR. TORLEY: I thought you said you owned the piece of property immediately to the east below that on the map.

MR. WOLINSKY: Right here, yeah, we'll be owning that piece of property.

MR. MILLER: It's a very small piece, it's a corner piece.

MR. TORLEY: I was asking about this chunk of land.

MR. MILLER: Talking about the piece right here, oh, I don't know the owner, it's not with this application.

MR. WOLINSKY: That's not us.

MR. KANE: So because it's an easement we have to drop the area?

MR. BABCOCK: Right.

MR. MILLER: Just big picture we really have three applications that have been before the planning board, one relates to the site itself where the supermarket is proposed, the second one relates to an amendment to the Monro Muffler because of the accessway and the third one relates to the Long John Silver's piece across 32 where we're aligning that driveway with the access from Hannaford, putting a signal there, in order to consolidate driveways and create a safer condition, so what this matter really relates to is a portion of the overall program relates to the site plan amendment proposed for Monro Muffler. They are all tied together, all three need to be dealt with simultaneously, but this is very specific to the Monro Muffler matter. If you go to your definitions in your zoning code regarding lot area, which might be a useful exercise, you'll see that the lot area suggests that that if an easement is encumbering the lot, that it only reduces the area of the lot if that easement would not permit development on the easement.

MR. WOLINSKY: It has the language in it or otherwise precluded from development.

MR. MILLER: It's clear that, you know, this easement would permit development at a minimum, we're developing a roadway on that portion of the property. So that's where we would respectfully request that the zoning board take a look at that, if you interpret in fact that that easement does not encumber the property to preclude development, then we're done and we can go back to the planning board and move this site plan forward.

MR. TORLEY: Mike, if that were the case just want to make sure this is increasing the developed area of the lot, we don't have a development area problem?

MR. KANE: Coverage.

MR. TORLEY: When you say we're taking 14,000, whatever it is.

MR. BABCOCK: No, it's not, so there's no developmental coverage in this zone.

MR. WOLINSKY: Reason we came up with that because if you think of it logically, if you look at, for example, a condo development, I think that's the easiest kind of situation to look at, every, all the common area in a condominium development is encumbered by easement which is the right of everybody who lives in that development to park there and go back and forth across the driveways and everything. So if you were to take a literal interpretation of the code and say that this did not or that precluded development then you would be creating all sorts of substandard situations in the town with, for example, respect to condo developments because all those driving areas and parking lots would have to be subtracted out of the lot area calculation.

MR. TORLEY: Are we making it impossible to build more condos?

MR. MILLER: We're more concerned about the history rather than--

MR. WOLINSKY: The other side is shopping centers often have tenants, they all have tenants, but sometimes the tenants own their lease pads and they all have leases and in all the leases in commercial shopping center there are reciprocal easement, reciprocal easement agreements, and if you interpret it in this manner, all those easements would come out and off the lot.

MR. TORLEY: Since either an interpretation or the area variance request requires a public hearing, we, I would entertain, you folks are experts in the area, I don't think you need rehearsal time, entertain a motion.

MR. RIVERA: Make a motion that we set House of Apache. Ltd. up for a public hearing for the 13,000 square feet lot area variance and/or interpretation and easement through Monro Muffler.

MR. KANE: Second the motion.

ROLL CALL

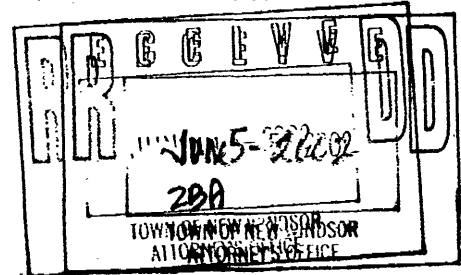
MR. REIS	AYE
MR. KANE	AYE
MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. TORLEY	AYE

V.G.R. Associates  
40 East 69th Street, 4th FL  
New York, NY 10021  
Tel. # (212) 249-1550  
Fax # (212) 249-5451

R.F.  
6/10/02.

June 3, 2002

Lawrence Torley, Chairman  
Zoning Board of Appeals  
Town of New Windsor  
555 Union Avenue  
New Windsor, New York 12553



Dear Mr. Chairman:

As the owner of the Price Chopper Supermarket shopping center, we are acutely aware of the existing traffic congestion at the five-corners intersection.

We hope the application for variance we were noticed for by Martin's Food of South Burlington, Inc., which would appear to be a surrogate for Hannaford Supermarkets, will be addressed in the overall context of the Hannaford application. I'm confident that we can rely on the Board to take due note of the potentially devastating effect of a new major traffic generator at the five corners on the residents of New Windsor and on the businesses located in the vicinity.

VGR ASSOCIATES

By: Reign Borhew

**PUBLIC NOTICE OF HEARING  
ZONING BOARD OF APPEALS  
TOWN OF NEW WINDSOR**

**PLEASE TAKE NOTICE** that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. \_\_\_\_\_

Request of Martin's Food of South Burlington, Inc.

for an INTERPRETATION or VARIANCE of the Zoning Local Law to Permit:

amendment of the existing Monro Muffler site plan to permit modified site access and relocation of several parking spaces.

being an interpretation of Section 48-37 or VARIANCE of Section 48-9, Table of Use/Bulk Regulations, Column C.

for property situated as follows:

Monro Muffler, New York State Route 94

known and designated as Tax Map Section 70, Blk. 1 Lot 2.1

**PUBLIC HEARING** will take place on the 10th day of June, 2002 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, New York beginning at 7:30 o'clock P.M.

Lawrence Torley  
Chairman

ZONING BOARD OF APPEALS:TOWN OF NEW WINDSOR  
COUNTY OF ORANGE:STATE OF NEW YORK

-----X  
In the Matter of the Application for Variance of

House of Apache Properties, LTD.  
#02-32

AFFIDAVIT OF  
SERVICE  
BY MAIL

\_\_\_\_\_  
STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE )

R. Meyers, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside in New Windsor, Orange County, N. Y.

That on the 17 day of May, 2002, I compared the 44 addressed envelopes containing the Public Hearing Notice pertinent to this case with the certified list provided by the Assessor regarding the above application for a variance and I find that the addresses are identical to the list received. I then caused the envelopes to be deposited in a U.S. Depository within the Town of New Windsor.

Rosemarie Meyers

Sworn to before me this

17th day of May, 2002.

Patricia A. Corsetti  
Notary Public

PATRICIA A. CORSETTI  
Notary Public, State of New York  
No. 01BA4904434  
Qualified in Orange County  
Commission Expires August 31, 2005.



**JACOBOWITZ AND GUBITS, LLP**

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Date:	May 15, 2002	From:	Tricia McMorris
Phone #:	845-563-4630	Total Pages:	2

**MESSAGE:** The attached is a copy of the public hearing notice for the above matter.

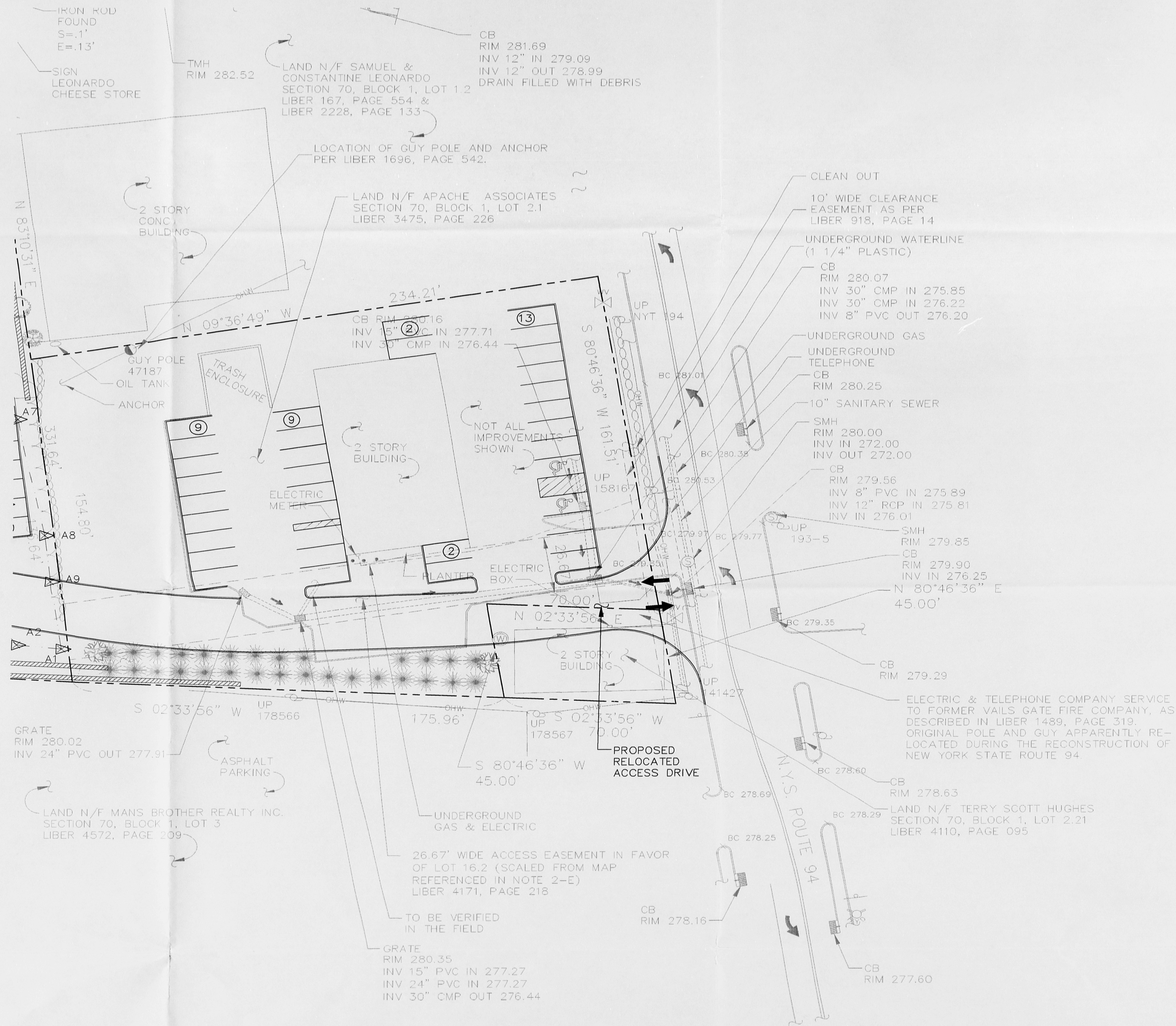
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REF NOTE 2A



## BULK REQUIREMENTS

TOWN OF NEW WINDSOR — DESIGN SHOPPING (C)  
USE: B-5 — SERVICE REPAIR GARAGE\*

MINIMUM REQUIREMENTS	REQUIRED	10/13/93 APPROVAL	PROPOSED
LOT AREA	40,000 SF	39,844 SF **	39,844 SF **
LOT WIDTH	200 FEET	192 FEET **	192 FEET **
FRONT YARD DEPTH	60 FEET	71 FEET	71 FEET
SIDE YARD	30 FEET	25 FEET **	25 FEET **
TOTAL BOTH YARDS	70 FEET	89 FEET	89 FEET
REAR YARD DEPTH	30 FEET	115 FEET	115 FEET
STREET FRONTAGE	NA	161 FEET	161 FEET
MAXIMUM ALLOWABLE			
BUILDING HEIGHT	4"/FT TO NEAREST LOT LINE	8 FEET 4 INCH	8 FEET 4 INCH
FLOOR AREA RATIO	0.5	0.11	0.11

\* BY SPECIAL PERMIT OF THE PLANNING BOARD

\*\* DENOTES VARIANCES OBTAINED FROM THE TOWN OF NEW WINDSOR ZONING BOARD OF APPEALS ON MARCH 22, 1993.

## PARKING REQUIREMENTS

MINIMUM REQUIREMENTS	REQUIRED	10/13/93 APPROVAL	PROPOSED
SERVICE REPAIR GARAGE 4 PER EACH SERVICE BAY, PLUS 1 PER 300 SF OF FLOOR AREA OUTSIDE OF SERVICE AREAS			
- 6 SERVICE BAYS	24 SPACES	24 SPACES	24 SPACES
- OUTSIDE OF SERVICE AREAS (2,280 SF/300 SF PER SPACE)	8 SPACES	9 SPACES	11 SPACES
TOTAL SITE PARKING	32 SPACES	33 SPACES	35 SPACES

## GENERAL NOTES

- THIS PLAN IS BASED ON A FIELD SURVEY BY TECTONIC ENGINEERING CONSULTANTS, PC COMPLETED ON 3/08/00 AND THE APPROVED SITE PLAN PREPARED BY SHAW ENGINEERING DATED 5/31/93 LAST REVISED 8/10/93.
- APPLICANT: MARTIN'S FOODS OF SOUTH BURLINGTON, INC.  
PO BOX 1000  
PORTLAND, ME 04104
- OWNER: TAX LOTS 70-1-2-21  
APACHE ASSOCIATES  
95 LAKE ROAD  
WARREN, CT 06075  
TAX LOT 70-1-2-21  
TERRY SCOTT HUGHES C/O  
NORTHEASTERN AUTO SALES  
981 LITTLE BRITAIN ROAD  
NEW WINDSOR, NY 12553
- AREA OF SUBJECT PARCELS: 0.98+ ACRES

## LEGEND

—	CONTOUR LINE
—	INDEX CONTOUR LINE
—	EDGE OF PAVEMENT
—	CURB
—	YELLOW LINE
—	WHITE LINE
—	WHITE LINE
—	OVERHEAD WRES
—	CHAINLINK FENCE
—	PROPERTY LINE
—	ADJOINING PROPERTY LINE
○	LIGHTPOLE
○	UTILITY POLE
○	GUY POLE
○	BOLLARD
○	SANITARY SEWER MANHOLE
○	MONITORING WELL
○	MANHOLE
○	DRAINAGE MANHOLE
○	WATER VALVE
○	GAS VALVE
○	HYDRANT
○	MAPLE TREE
○	ASH TREE
○	LOCUST TREE
○	IRON PIN FOUND
○	SPIKE FOUND
○	NYS MON FOUND
○	DOUBLE POLE SIGN
○	SINGLE POLE SIGN
○	WETLANDS FLAG NUMBER

TOWN OF NEW WINDSOR  
PLANNING BOARD APPROVAL BLOCK

**TECTONIC** ENGINEERING  
CONSULTANTS P.C.

P.O. Box 37, 70 Pleasant Hill Road  
Mountaintop, NY 12953

(514) 534-5959

## AMENDED SITE PLAN

MONROE MUFFLER BRAKE INC.  
FOR HANNAFORD BROS. CO.  
NYS ROUTE 94  
TOWN OF NEW WINDSOR  
ORANGE COUNTY, NEW YORK

Date	11/5/00	Work Order	2586.01	Drawing No.	C-102A	Rev.	0
Scale	1"=20'						

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ORIGINAL SIZE IN INCHES

Rev	Date	Revision	Approved	Designed	Drawn	Checked	Released	By	Date
				RW/JWS	JWS	RW			
				Purpose	Released by				
				For Comment					
				For Approval					
				For Bid					
				For Construction					

